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REPORT

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON

ECCLESIASTICAL TITLES

IN

GREAT BRITAIN AND IRELAND;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed,*
23 *June* 1868.

REPORT.

BY THE SELECT COMMITTEE appointed to inquire into the Operation of any Law or Laws as to the Assumption of Ecclesiastical Titles in Great Britain and Ireland; and whether any and what Alteration should be made therein; and to Report to the House:—

ORDERED TO REPORT,

The Committee, in pursuance of the task entrusted to them, have examined several witnesses, and carefully considered the evidence given on the same subject before the Committee of the House of Commons last year, and now on the Table of the House.

The enactments referred to the Committee are the 14 Vict. c. 60 (the Ecclesiastical Titles Act), passed in 1851, and Section 24 of the Act 10 Geo. 4, c. 7 (the Roman Catholic Relief Act), passed in 1829. Looking to the joint operation of these Acts, it does not appear to the Committee that they have in fact, as has sometimes been supposed, caused to the Roman Catholics any real injury in the matter of charitable donations and bequests. They may have given rise to the necessity of circumlocution in the legal deeds requisite on such occasions, but the Committee have not found any instance where the wishes of the donor or testator have failed to be fulfilled. Cases, however, have been adduced as of possible occurrence in which grievances of this kind might hereafter be actually experienced.*

* Evidence of Bishop Grant, Questions 433 and the next following.

While the Roman Catholic Relief Act gave general satisfaction, and Roman Catholic Archbishops and Bishops, although forbidden to use the titles of their sees, sat on the Irish Board of National Education, it is alleged by several witnesses of great weight and authority on the Roman Catholic side, and not, so far as the Committee know, denied in any quarter, that the Ecclesiastical Titles Act has given rise to great dissatisfaction in the Roman Catholic body, by no means confined to the prelates and priests of the Roman Catholic Church, but extending to the laymen of their communion. That dissatisfaction, it is stated, has not passed away with the lapse of time since the enactment of 1851, but is still keenly felt.† In Ireland it has had the effect of alienating the heads of the Roman Catholic Church from Her Majesty's Government.

† Sir Colman O'Loghlen, Questions 564 and following.

The Committee, have therefore, particularly inquired into the provisions of the latter Act. They find that the first clause declares and enacts that which has always been common law, and asserted to be so and confirmed by statute from a very early period. This is particularly set forth in the 16 Richard 2, c. 5, passed in 1392, nearly 500 years ago. The preamble to that Act, among other matters, sets forth that, "Whereas the Commons of the Realm in "this present Parliament have showed to our redoubted Lord the King, "grievously complaining that whereas our said Lord the King, and all his "liege people ought of right, and of old time were wont, to sue in the King's "Court to recover their presentments to churches to which they had a "right to present, the cognisance of the plea of which presentment belongeth "only to the King's Court of the old right of his Crown, used and approved "in the time of all his progenitors Kings of England; but now of late divers "processes be made by the Holy Father the Pope, and censures of excommunication upon certain Bishops of England, because they have made

" execution of such commandments to the open disherison of the said Crown, " and destruction of the regalty of our said Lord the King, his law and all his " realm, if remedy be not provided; and also it is said that the said Holy " Father the Pope hath ordained and purposed to translate some prelates of " the same realm, without the King's assent and knowledge, by which trans- " lations, if they should be suffered, the statutes of the realm should be " defeated and made void, and so the Crown of England, which hath been so " free at all times, that it hath been in no earthly subjection, but immediately " subject to God in all things touching the regalty of the Crown, and to none " other, should be submitted to the Pope, and the laws and statutes of the " realm by him defeated and avoided at his will, in perpetual destruction of " the sovereignty of the King our Lord, his Crown, his regalty, and of all his " realm, which God defend."

In accordance with the principles thus declared, the Act provides that, " If " any purchase or pursue, or cause to be purchased or pursued in the Court of " Rome or elsewhere any such translations, processes, sentences of excommuni- " cation, bulls, instruments or any other things whatever which touch the King, " against him, his Crown, and his regalty or his realm as is aforesaid, and they " which being within the realm, or there receive or make thereof notification or " any other execution whatsoever within the same realm or without, that they, " their notaries, procurators, maintainers and abettors, fautors and counsellors, " shall be put out of the King's protection, and their lands and tenements, " goods and chattels forfeit to our Lord the King, and that they be attached by " their bodies, if they may be found and brought before the King and his " Council there to answer to the cases aforesaid, or that process be made against " them by *præmunire facias* in manner as is ordained in other statutes of pro- " visors and against others which do sue in any other court in derogation of the " regalty of our Lord the King."

The next statute the Committee desire to notice, is the 28 Hen. 8, c. 16, on account of its referring to, and thereby confirming and continuing, the Act of Richard the Second. It enacts, "That all bulls, breves, faculties, and dispensa- " tions, of what names, natures, or qualities whatsoever they be of, heretofore " had or obtained from the Bishop of Rome, or any of his predecessors, or by the " authority of the See of Rome, by or to any subjects, resiants, or bodies politic " or corporate, of or in this realm, or of or in any other the King's dominions, " shall from thenceforth be clearly void and of no value, force, strength, nor virtue, " and shall never hereafter be used, admitted, allowed, pleaded, or alleged in " any places or courts of this realm, or of any other the King's dominions upon " the pains contained in the Statute of Provision and Præmunire, made in the " sixteenth year of the Reign of King Richard the Second."

This Act, passed in 1536, was repealed in 1554, 1 Philip and Mary, c. 8, and revived in 1558 by 1 Elizabeth, c. 1. It therefore appears that the first section of the Ecclesiastical Titles Act, which only provides that " All such " briefs, rescripts, or letters apostolical, and all and every the jurisdiction, autho- " rity, pre-eminence, or title conferred, or pretended to be conferred thereby, " are, and shall be and be deemed unlawful and void," does no more than declare and assert that which was law before that Act was added to the Statute Book. The Ecclesiastical Titles Act was considered by Parliament to be a measure not of aggression but of defence. The Pope had assumed to divide England by his own authority into dioceses, over each of which he placed an Archbishop or Bishop, with a Territorial Jurisdiction, and an Ecclesiastical Title, derived from some place within Her Majesty's dominions. This excited great indignation in the country, and in Parliament, through which the Bill was passed by large majorities.

No attempt has been made to enforce the prohibitions or to levy the penalties under the section of the Act of 1829, or under the Act of 1851.

The Committee, however, are not of opinion that these enactments, and more especially the Act of 1851, have been ineffectual: they were a plain and emphatic assertion by the Legislature of the constitutional authority and supremacy of the Sovereign, and there has not since 1851 been any general or ostentatious infraction of the enactment of that year by those against whom it was directed.

It has been suggested, that the object of the Act of 1851 would have been sufficiently attained by a simple declaration of the invalidity of any assumption

of

of ecclesiastical titles of honour, or of any attempt to confer coercive jurisdiction otherwise than under the authority of Her Majesty, and according to the laws of the realm, unaccompanied by the enactment of any penalties. But the Committee are of opinion that while a mere repeal of the section of the Act of 1829 and of the Act of 1851, would be open to misconstruction, and therefore inexpedient, any advantage to be gained by a modification of those enactments in the manner above indicated, would be more than counterbalanced by the evil of re-opening, without any sufficient cause, the discussion of a question always calculated to occasion much irritation of feeling.

The Committee have directed the Minutes of Evidence taken before them, together with an Appendix, to be laid before your Lordships.

16th June 1868.

ORDER OF REFERENCE.

Die Jovis, 26° *Martii*, 1868.

ECCLESIASTICAL TITLES IN GREAT BRITAIN AND IRELAND.

Moved, "That a Select Committee be appointed to inquire into the operation of any "Law or Laws as to the assumption of Ecclesiastical Titles in Great Britain and Ireland; "and whether any and what Alteration should be made therein:" Objected to; and after Debate, on Question, Agreed to: (The Earl Stanhope).

Die Veneris, 27° *Martii*, 1868.

Select Committee, to be named on Monday next.

Die Lunæ, 30° *Martii*, 1868.

Select Committee on: "The Lords following were named of the Committee; the "Committee to meet To-morrow, at Four o'clock, and to appoint their own Chairman:"

Lord Chancellor.
Lord Archbishop of York.
Lord Privy Seal.
Duke of Somerset.
Earl Stanhope.
Earl of Carnarvon.
Earl of Harrowby.
Earl Granville.
Earl Russell.
Lord Bishop of London.
Lord Bishop of Oxford.
Lord Redesdale.
Lord Colchester.
Lord Somerhill.
Lord Lyveden.

Die Veneris, 3° *Aprilis*, 1868.

"The Evidence taken from Time to Time before the Select Committee to be Printed for "the Use of the Members of this House, but no Copies thereof to be delivered, except "to the Members of the Committee, until further Order."

LORDS PRESENT, AND MINUTES OF PROCEEDINGS AT EACH SITTING OF THE COMMITTEE.

Die Martis, 31° *Martii*, 1868.

LORDS PRESENT:

Lord Chancellor.	Earl Russell.
Earl Stanhope.	Lord Redesdale.
Earl of Carnarvon.	Lord Colchester.
Earl of Harrowby.	Lord Lyveden.

Order of Reference read.

It is proposed that the Earl *Stanhope* do take the Chair.

The same is agreed to, and the Earl *Stanhope* takes the Chair accordingly.

The course of proceeding is considered.

Ordered, That the Committee be adjourned till Friday the 24th of April, One o'clock.

Die Veneris, 24° *Aprilis*, 1868.

LORDS PRESENT:

Lord Chancellor.	Earl Granville.
Lord Archbishop of York.	Earl Russell.
Lord Privy Seal.	Lord Bishop of London.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Harrowby.	Lord Lyveden.

The Earl STANHOPE in the Chair.

Order of adjournment read.

Order of the House of Friday the 3rd of April last, that the evidence taken from time to time before the Select Committee be printed for the use of the Members of this House, but that no copies thereof be delivered, except to the Members of the Committee, until further order, read.

The Proceedings of the Committee of Tuesday the 31st of March last, are read.

The following Witnesses are called in and examined (*vide* the Evidence), viz.: Mr. *William Gernon*, Lord Justice *Page Wood*.

Ordered, That the Committee be adjourned till Tuesday next, One o'clock.

Die Martis, 28° *Aprilis*, 1868.

LORDS PRESENT:

Lord Archbishop of York.	Earl Granville.
Lord Privy Seal.	Lord Bishop of London.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Carnarvon.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.

The Earl STANHOPE in the Chair.

Order of Adjournment read.

The Proceedings of the Committee of Friday last are read.

The following Witnesses are called in and examined (*vide* the Evidence), viz.: Sir *Travers Twiss*, D.C.L.; Right Hon. Sir *Joseph Napier*, Bart.; Mr. *John Thomas Ball*, LL.D.; Mr. *William Gernon*.

Ordered, That the Committee be adjourned till Tuesday next, One o'clock.

Die Martis, 5° *Maii*, 1868.

LORDS PRESENT:

Lord Archbishop of York.	Lord Bishop of London.
Lord Privy Seal.	Lord Bishop of Oxford.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Carnarvon.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.
Earl Granville.	

The Earl STANHOPE in the Chair.

Order of Adjournment read.

The Proceedings of the Committee of Tuesday last are read.

The following Witnesses are called in and examined (*vide* the Evidence), viz.: Right Rev. Bishop *Grant*; Sir *Colman O'Loghlen*, Bart., M.P.

Ordered, That the Committee be adjourned till Tuesday next, One o'clock.

Die Martis, 12° *Maii*, 1868.

LORDS PRESENT:

Lord Archbishop of York.	Earl Granville.
Lord Privy Seal.	Lord Bishop of London.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Carnarvon.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.

The Earl STANHOPE in the Chair.

Order of Adjournment read.

The Proceedings of the Committee of Tuesday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz. Rev. *James Aitken Wylie*, LL.D; Rev *Robert James M'Ghie*.

Ordered, That the Committee be adjourned till Tuesday next, One o'clock.

Die Martis, 19° *Maii*, 1868.

LORDS PRESENT:

Lord Chancellor.	Earl Granville.
Lord Archbishop of York.	Earl Russell.
Lord Privy Seal.	Lord Bishop of London.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Carnarvon	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.

The Earl STANHOPE in the Chair.

Order of Adjournment read.

The Proceedings of the Committee of Tuesday last are read.

The Committee deliberated, and, upon the Motion of the Lord *Archbishop of York*, decided not to take any further Evidence.

THE Draft of a Report prepared by the Chairman, the Draft of a Report prepared by the Lord Redesdale, and the Draft of the Report prepared by the Chairman, with Amendments proposed to be inserted in it by the Earl Russell, are severally laid before the Committee by the Chairman:—The same are read, and are as follows; viz.

DRAFT REPORT proposed by the Chairman.

"1. The Committee, in pursuance of the task entrusted to them, have examined several witnesses, and carefully considered the other evidence which was adduced before the Committee of the House of Commons last year, and which is now on the Table of the House.

"2. The two Acts or parts of Acts referred to the Committee are the 14 Vict. c. 60 (the Ecclesiastical Titles Act), and Section 24 of the Act 10 Geo. 4, c. 7 (the Roman Catholic Relief Act). Looking to the joint operation of these Acts, it does not appear to the Committee that they have in fact, as has sometimes been supposed, caused to the Roman Catholics any real injury in the matter of charitable donations and bequests. They may have given rise to the necessity of cumbrous circumlocution in the legal deeds requisite on such occasions, but the Committee have not found any instance where the wishes of the donor or testator have failed to be fulfilled. Cases, however, have been adduced as of possible occurrence in which grievances of this kind might hereafter be actually experienced.*

* Evidence of Bishop Grant, Questions 433 and the next following.

"3. On the other hand, it is alleged by several witnesses of great weight and authority on the Roman Catholic side, and not, so far as the Committee know, denied in any quarter, that these Acts have given rise to very great dissatisfaction and sense of injury in the Roman Catholic body. That dissatisfaction is stated to be by no means confined to the prelates and priests of the Roman Catholic Church, but to extend equally to the laymen of their communion. That dissatisfaction is stated to have by no means passed away with the lapse of time since the enactment of 1851, but to be felt at this moment almost as keenly as at first.† In Ireland it has had the evil effect of completely alienating the heads of the Roman Catholic Church from the heads of Her Majesty's Government. 'Since the passing of the Ecclesiastical Titles Act, the bishops,' as one of their own number states, 'think that it is their duty, or becoming their station, to keep themselves altogether apart from any official connection or communication with the Government of the country.'‡ In like manner it is stated by the same authority, that whilst in former years several Roman Catholic bishops sat, greatly to the public advantage and contentment, on the Board of National Education, no such bishop at the present day would accept a seat on that Board.

† Sir Colman O'Loghlen, Questions 564 and following.

"4. Neither under the section of the Act of 1829, nor under the Act of 1851, has the smallest attempt been made to enforce the prohibitions or to levy the penalties which they impose. Under such circumstances, the Committee must confess themselves unable to discern how the retention of these prohibitions and penalties upon the Statute Book can be held to afford any security to any of our Protestant institutions.

"5. The opinion of the Committee upon this point is confirmed by that of laymen of great weight and authority among the Protestants of Ireland, as especially the Right Hon. Sir Joseph Napier, lately Member for the University of Dublin, and Dr. Ball, Vicar General of the Province of Armagh.§

§ Questions 317. 321, 322, &c.; also Questions 363 and 364.

"6. It

‡ Bishop Moriarty, before the Commons Committee, Questions 707, &c. *See* also Sir Colman O'Loghlen, before this Committee, Question 557.

"6. It appears also to the Committee no inconsiderable evil that any law should be continued when its enactments are systematically disregarded, and where it is understood that they are never to be carried into practical effect.

"7. The Committee think, however, that a mere repeal of these two Acts, unaccompanied by any other provision, as has sometimes been proposed, would not be sufficient nor satisfactory. They conceive that any such repeal should be accompanied by a declaration in the clearest terms of the Queen's undoubted prerogative as the Fountain of Honour, as by right the sole dispenser of territorial titles within her own dominions.

"8. With this object the Committee desire to call the attention of the House to the Canadian Act, bearing date 30th May 1849, and printed at length in the Appendix to the Report of the House of Commons Committee of last year. It is entitled 'An Act to incorporate the Roman Catholic Archbishop and Bishops in each Diocese of Lower Canada;' and having been ratified by Parliament, it is now the 12 Vict. c. 186. This Act, while it recognizes the territorial titles of these prelates, as for instance 'The Right Reverend Joseph Signay, Roman Catholic Archbishop of Quebec,' or 'The said Joseph Signay and his successors, being Archbishop of Quebec aforesaid, in communion with the Church of Rome,' contains the following clause:

"'And be it enacted that nothing herein contained shall affect, or be construed to affect, in any manner or way the rights of Her Majesty, Her heirs or successors, or of any person or persons, or of any body politic or corporate, such only excepted as are hereinbefore mentioned and provided for.'

"9. It has been stated to the Committee, by high authority upon the Roman Catholic side, that a Clause of similar import in any Bill to repeal the two statutes that are now complained of, would be considered free from all objection and 'perfectly satisfactory.'*

* Sir Colman O'Loghlen, Questions 605 and 606.

"10. The Committee are further of opinion that in such a repealing Act as they have described, there should be another clause, fixing for purposes of legal description the proper mode of designation applicable to Roman Catholic Prelates.

"11. Several forms for such designation that seem free from difficulty might be suggested. A witness of considerable weight, the Right Hon. Mr. Justice O'Hagan, in his evidence before the House of Commons Committee, referred to the Canadian precedent, as naming *A. B.*, Archbishop of Quebec, in communion with the Church of Rome, and he added: 'I see no objection on my own part to some such designation; and for my own part, as a Catholic, I have no objection to be described, or have a bishop described, as a 'Roman Catholic,' that is, a member of the one Church Catholic in communion with the Holy See.'†

† Report of Commons Committee, Question 61.

"12. Sir Colman O'Loghlen, as a witness before the present Committee, concurred in approving the form contained in the Canadian Act, as '*A. B.*, Archbishop of Quebec, in communion with the Church of Rome,' and added only: 'If I had been drawing the Act I would have put in 'with the See of Rome;' but that is a mere technical objection, and I do not think that anybody would object to it.'" Question 587.

DRAFT REPORT proposed by the Lord *Redesdale*.

"The Committee, in pursuance of the task entrusted to them, have examined several witnesses, and carefully considered the evidence which was adduced before the Committee of the House of Commons last year on the same subject, and which is now on the Table of the House.

"The enactments referred to the Committee are 14 Vict. c. 60, and Section 24 of 10 Geo. 4, c. 7. Looking at the operation of these laws, the Committee are unable to discover that they have caused any real injury to Roman Catholics in the matter of charitable donations and bequests, as has sometimes been supposed, or have prevented the wishes of a donor or testator being fulfilled. On the other hand, it appears that though little objection was expressed or felt by the Roman Catholics to the before-mentioned provision of the Act of George 4, at the time of its passing, the irritation caused by the introduction of the Ecclesiastical Titles Act has led to much agitation, and to both being now regarded with dissatisfaction by that body.

"The Committee have therefore particularly inquired into the provisions of the latter Act so much complained of. They find that the first clause declares and enacts that which has always been common law, and asserted to be so and confirmed by statute from a very early period. This is particularly set forth in the 16th Richard 2, c. 5, passed in 1392, nearly 500 years ago. The preamble to that Act, among other matters, sets forth that 'Whereas the Commons of the Realm in this present Parliament have showed to 'our redoubted Lord the King, grievously complaining that whereas our said Lord the 'King, and all his liege people ought of right, and of old time were wont, to sue in 'the King's Court to recover their presentments to churches to which they had a right 'to present, the cognizance of the plea of which presentment belongeth only to the 'King's

'King's Court of the old right of his Crown, used and approved in the time of all his 'progenitors Kings of England; but now of late divers processes be made by the Holy 'Father the Pope, and censures of excommunication upon certain Bishops of England, 'because they have made execution of such commandments to the open disherison of the 'said Crown, and destruction of the regalty of our said Lord the King, his law and all 'his realm, if remedy be not provided; and also it is said that the said Holy Father 'the Pope hath ordained and purposed to translate some prelates of the same realm, 'without the King's assent and knowledge, by which translations, if they should be 'suffered, the statutes of the realm should be defeated and made void, and so the Crown 'of England which has been so free at all times, that it hath been in no earthly subjection, 'but immediately subject to God in all things touching the regalty of the Crown, and to 'none other, should be submitted to the Pope, and the laws and statutes of the realm 'by him defeated and avoided at his will, in perpetual destruction of the sovereignty 'of the King, our Lord, his Crown, his regalty and of all his realm, which God defend.'

"In accordance with the principles thus declared, the Act provides that, 'If any pur-'chase or pursue, or cause to be purchased or pursued in the Court of Rome or elsewhere 'any such translations, processes, sentences of excommunication, bulls, instruments or 'any other things whatever which touch the King, against him, his Crown, and his 'regalty or his realm as is aforesaid, and they which being within the realm, or there 'receive or make thereof notification or any other execution whatsoever within the same 'realm or without, that they, their notaries, procurators, maintainers and abettors, fautors 'and counsellors, shall be put out of the King's protection, and their lands and tenements, 'goods and chattels forfeit to our Lord the King, and that they be attached by their 'bodies, if they may be found and brought before the King and his Council there to 'answer to the cases aforesaid, or that process be made against them by *præmunire facias* 'in manner as is ordained in other statutes of provisors and against others which do sue in 'any other court in derogation of the regalty of our Lord the King.'

"The Committee desire to direct the attention of the House to this statute as affording clear evidence that the first clause of the Act of 1851 did not introduce any novelty into the legislation of this country, and that what was therein declared to be the law, did not originate in Protestant hostility to Romanism, but was based on the fundamental principles of the Constitution.

"The next statute the Committee desire to notice, is the 28 Hen. 8, c. 16, which enacts, 'That all bulls, breves, faculties, and dispensations, of what names, natures, or qualities 'whatsoever they be of, heretofore had or obtained from the Bishop of Rome, or any of 'his predecessors, or by the authority of the See of Rome, by or to any subjects, resiants, 'or bodies politic or corporate, of or in this realm, or of or in any other the King's domi-'nions, shall from thenceforth be clearly void and of no value, force, strength, nor virtue, 'and shall never hereafter be used, admitted, allowed, pleaded, or alleged in any places or 'courts of this realm, or of any other the King's dominions upon the pains contained in 'the Statute of Provision and Præmunire, made in the sixteenth year of the Reign of 'King Richard the Second.'

"This Act, passed in 1536, was repealed in 1554, 1 Philip & Mary, c. 8, and revived in 1558 by 1 Elizabeth, c. 1. It is therefore clear that the first section of the Ecclesiastical Titles Act, which only provides that 'All such briefs, rescripts, or letters apostolical, 'and all and every the jurisdiction, authority, pre-eminence, or title conferred, or pre-'tended to be conferred thereby, are and shall be and be deemed unlawful and void,' does no more than declare and assert that which was law both by ancient usage and a succession of Parliamentary enactments, before that Act was added to the Statute Book.

"The Committee are of opinion that the principle maintained by these Acts is most important, and they object therefore to the repeal of that section; for although the law would probably remain unaltered, notwithstanding such repeal, an impression would undoubtedly be created that the principle had been abandoned by such a course, and an excuse afforded for holding that the repeal of the latest enactment on the subject had indirectly but virtually abrogated the preceding ones. Much mischief may arise from such opinions being industriously advocated by Roman ecclesiastical authority, and consequences ensue which might render a new assertion of the Royal Prerogative necessary at no distant date; and it appears therefore to the Committee desirable to retain that portion of the Act which only re-asserts the law as it has existed from very early times, when the State was in communion with Rome, and which can afford no just cause of offence. By adopting this course, the risk of future agitation and ill-will, which would necessarily attend any new legislation of a similar character, may be most surely avoided.

"The Committee are disposed to recommend that the second clause, which enacts the penalty, should be repealed. It carefully provides that no prosecution shall be had under it without the concurrence of the Attorney General, and the Roman Catholic prelates have been and are thereby secured from any vexatious proceedings against them which their conduct did not call for, but it does not appear necessary for the maintenance of the rights of the Crown, or the security of the Church. So long as the creation of dioceses in these realms by the Pope is declared to be contrary to law, and void, the power to inflict such a penalty is of little value, while the repeal of it will be gratifying to the Roman Catholic body, lay and ecclesiastical. The opinion of the Committee on this point is confirmed by the evidence of several Protestant witnesses of great weight and authority.

The repeal of the penalty in the 24th section of the Roman Catholic Relief Act is recommended for the same reasons.

"Various suggestions have been made to the Committee for giving a legal designation to Roman Catholic Prelates, but they cannot advise legislation on that subject. The recognition by statute of Roman Catholic prelates as bishops of any district or place will be held to be an admission that such dioceses have been created, and are subjected to such bishops. The only designation the Committee could recommend would be that of Roman Catholic bishops in, and not of, a particular district or place; but they believe that any such title would not be acceptable to the Roman Ecclesiastics, as it would not afford any acknowledgment of that jurisdiction which it is their object to establish in this realm. Bishop Grant, the only Roman Catholic prelate who was examined by the Committee, was unfavourable to the adoption of a legal designation of a distinctive character, and the Committee are of opinion that it will be far better to leave such a delicate matter alone than to deal with it in any manner which is not likely to be perfectly satisfactory. They cannot expect such to be the result of any of the suggestions made to them, and are satisfied that any such designations would not be thankfully received by the prelates of the Roman Catholic Church, would not be commonly used by them, and would be far more likely to prove a source of future agitation than a permanent settlement of the question."

DRAFT REPORT of the Chairman, with Amendments proposed by the Earl Russell. (The proposed Amendments are printed in *Italics.*)

"The Committee, in pursuance of the task entrusted to them, have examined several witnesses, and carefully considered the other evidence which was adduced before the Committee of the House of Commons last year, and which is now on the Table of the House.

"The two Acts or parts of Acts referred to the Committee are the 14 Vict. c. 60 (the Ecclesiastical Titles Act), and section 24 of the Act 10 Geo. 4, c. 7 (the Roman Catholic Relief Act). Looking to the joint operation of these Acts, it does not appear to the Committee that they have in fact, as has sometimes been supposed, caused to the Roman Catholics any real injury in the matter of charitable donations and bequests. They may have given rise to the necessity of cumbrous circumlocution in the legal deeds requisite on such occasions, but the Committee have not found any instance where the wishes of the donor or testator have failed to be fulfilled. Cases, however, have been adduced as of possible occurrence, in which grievances of this kind might hereafter be actually experienced.*

* Evidence of Bishop Grant, Questions 433 and the next following.

"*On the other hand, it appears that while the Roman Catholic Relief Act gave general satisfaction, and that although forbidden to use the titles of their sees, Roman Catholic Archbishops and Bishops sat on the Irish Board of National Education, such as Archbishop Murray and others,* it is alleged by several witnesses of great weight and authority on the Roman Catholic side, and not, so far as the Committee know, denied in any quarter, that *the Ecclesiastical Titles Act gave* (these Acts have given) rise to very great dissatisfaction and sense of injury in the Roman Catholic body. That dissatisfaction is stated to be by no means confined to the prelates and priests of the Roman Catholic Church, but to extend equally to the laymen of their communion. That dissatisfaction is stated to have by no means passed away with the lapse of time since the enactment of 1851, but to be felt at this moment almost as keenly as at first.† In Ireland it has had the evil effect of completely alienating the heads of the Roman Catholic Church from the heads of Her Majesty's Government. 'Since the passing of the Ecclesiastical Titles Act, the bishops,' as one of their own number states, 'think that it is their duty, or becoming their station, 'to keep themselves altogether apart from any official connection or communication with 'the Government of the country.'‡ In like manner it is stated by the same authority, that whilst in former years several Roman Catholic bishops sat, greatly to the public advantage and contentment, on the Board of National Education, no such bishop at the present day would accept a seat on that Board.

† Sir Colman O'Loghlen, Questions 564 and following.

"*It must be remembered, however, that the Ecclesiastical Titles Act was an act on the part of Parliament, not of aggression, but of defence. It had pleased the Pope, of his own authority, without any previous communication with the Government of this country, to divide England into districts, over each of which he placed an Archbishop or Bishop with an Ecclesiastical title.*

"*This apparent assumption of a territorial power excited great popular indignation and a very general uneasiness. It had no warrant in the most ancient documents of the Christian Church at Rome, nor in the statutes of the realm previously to the Reformation, nor in the laws of the most civilised Roman Catholic States of Europe.*

"'*Thus the Epistle of St. Clement, one of the earliest Popes, to the Church at Corinth, commences thus:*

"'*Dei Ecclesia quæ Roma peregrinatur, Ecclesiæ Dei quæ Corinthi peregrinatur, &c.*'§

"*So*

‡ Bishop Moriarty, before the Commons Committee, Questions 707, &c. *See* also Sir Colman O'Loghlen, before this Committee, Question 557.

§ Jacobson, Patres Apostolici, vol. 1.

"*So likewise the famous Epistle of the Church of Smyrna, relating the Martyrdom of St. Polycarp, begins thus:*

"'*Ecclesia Dei quæ est apud Smyrnam, Ecclesiis Dei salutem, &c.*'*

"*Such was the plain language of the early Christian Churches.*

"*In the history of the English Church before the Reformation, we find a steady resistance to the encroachments of the Papal See. Queen Mary also, when she reconciled England to the Church of Rome, never proposed to repeal those Acts of the English Parliament which existed before the reign of her father; they are, however, said to be now obsolete.*

"*In a similar spirit, the principal Roman Catholic States of Europe have forbidden the introduction and circulation of Papal Bulls of a certain description without the sanction of the civil authority. The Pope would never dream of restoring in France the Episcopal titles which existed before the Revolution.*

"Neither under the section of the Act of 1829, nor under the Act of 1851, has the smallest attempt been made to enforce the prohibitions or to levy the penalties which they impose.

"*In fact, there appears to have been no such ostentatious assumption of Ecclesiastical Titles as the Act was intended to restrain. The Roman Catholic Archbishops and Bishops, both in England and Ireland, have respectfully abstained from any open defiance of the authority of Parliament.*

"*With a view, however, to conciliate irritated feelings, and contribute to religious harmony, your Committee venture to suggest that an enacting Act might be passed, giving Her Majesty the power to declare, by Orders in Council, that a Roman Catholic Archbishop or Bishop in England or Ireland may assume and use the title of the Most Rev. (inserting the name of the Prelate), Roman Catholic Archbishop of Westminster, the Most Rev. (inserting the name of the Prelate), Roman Catholic Archbishop of Dublin, and so on with regard to Roman Catholic Archbishops and Bishops of any place in England or Ireland, and enacting that no disability or penalty shall attach to the use of titles thus authorised by Her Majesty in Council.*

Note.—The remaining paragraphs of the Chairman's Draft Report proposed to be omitted by the Earl Russell.

Ordered, That the Committee be adjourned till Tuesday next, One o'clock.

Die Martis, 26° Maii, 1868.

LORDS PRESENT:

Lord Archbishop of York.	Lord Bishop of London.
Lord Privy Seal.	Lord Bishop of Oxford.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Carnarvon.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.
Earl Granville.	

The Earl STANHOPE in the Chair.

Order of Adjournment read.

The Proceedings of the Committee of Tuesday last are read.

The Draft of the Report proposed by the *Chairman* is considered by the Committee.

Paragraphs 1 and 2 are read, and Amendments are made therein.

Paragraph 3 is read, and Amendments are made therein.

It is then moved by the *Lord Bishop of Oxford*, to insert "(It has been stated by Bishop Moriarty and others that)" after "(Ireland)," in line 8 of the paragraph.

Objected to.—On Question, That the Amendment be agreed to.

Content.	Not Content.
Lord Privy Seal.	Lord Archbishop of York.
Earl of Carnarvon.	Duke of Somerset.
Lord Bishop of London.	Earl Stanhope.
Lord Bishop of Oxford.	Earl of Harrowby.
Lord Redesdale.	Earl Granville.
Lord Colchester.	Lord Somerhill.
	Lord Lyveden.

It is proposed by the Lord *Redesdale*, to insert the following paragraph after paragraph 3:—

"The Committee have therefore particularly inquired into the provisions of the latter Act. They find that the first clause declares and enacts that which has always been common law, and asserted to be so, and confirmed by statute from a very early period. That is particularly set forth in the 16 Richard 2, c. 5, passed in 1392, nearly 500 years ago. The

* Jacobson, Patres Apostolici, vol. 2.

The preamble to that Act, among other matters, sets forth that, 'Whereas the Commons 'of the realm in this present Parliament have showed to our redoubted Lord the King, 'grievously complaining that whereas our said Lord the King, and all his liege people 'ought of right, and of old times were wont, to sue in the King's Court to recover their 'presentments to churches to which they had a right to present, the cognisance of the 'plea of which presentment belongeth only to the King's Court of the old right of his 'Crown, used and approved in the time of all his progenitors Kings of England; but now 'of late divers processes be made by the Holy Father the Pope, and censures of excom-'munication upon certain Bishops of England, because they have made execution of such 'commandments to the open disherison of the said Crown, and destruction of the regalty 'of our said Lord the King, his law and all his realm, if remedy be not provided; and 'also it is said that the said Holy Father the Pope hath ordained and purposed to translate 'some prelates of the same realm, without the King's assent and knowledge, by which 'translations, if they should be suffered, the statutes of the realm should be defeated 'and made void, and so the Crown of England, which hath been so free at all times, 'that it hath been in no earthly subjection, but immediately subject to God in all things 'touching the regalty of the Crown, and to none other, should be submitted to the 'Pope, and the laws and statutes of the realm by him defeated and avoided at his will, 'in perpetual destruction of the sovereignty of the King our Lord, his Crown, his re-'galty, and of all his realm, which God defend.'"

"In accordance with the principles thus declared, the Act provides that, 'If any 'purchase or pursue, or cause to be purchased or pursued, in the Court of Rome or else-'where, any such translations, processes, sentences of excommunication, bulls, instruments, 'or any other things whatever which touch the King, against him, his Crown, and his re-'galty or his realm as is aforesaid, and they which being within the realm, or there receive 'or make thereof notification or any other execution whatsoever within the same realm 'or without, that they, their notaries, procurators, maintainers and abettors, fautors and 'counsellors, shall be put out of the King's protection, and their lands and tenements, 'goods and chattels forfeit to our Lord the King, and that they be attached by their 'bodies, if they may be found and brought before the King and his council there to answer 'to the cases aforesaid, or that process be made against them by *præmunire facias* in 'manner as is ordained in other statutes of provisors and against others which do sue in 'other court in derogation of the regalty of our Lord the King.'"

"The next statute the Committee desire to notice is the 28 Hen. 8, c. 16, which enacts, 'That all bulls, breves, faculties, and dispensations, of what names, natures or 'qualities whatsoever they be of, heretofore had or obtained from the Bishop of Rome, 'or any of his predecessors, or by the authority of the See of Rome, by or to any 'subjects, resiants, or bodies politic or corporate, of or in this realm, or of or in any 'other the King's dominions, shall from thenceforth be clearly void and of no value, 'force, strength, nor virtue, and shall never hereafter be used, admitted, allowed, pleaded 'or alleged in any places or courts of this realm, or of any other the King's dominions 'upon the pains contained in the Statute of Provision and Præmunire, made in the six-'teenth year of the reign of King Richard the Second.'"

It is then moved by the Lord *Lyveden* to leave out from (ago), in line 4, to the end of the paragraph.

Objected to. On Question, That the words proposed to be left out stand part of the paragraph:

Content.	Not Content.
Lord Archbishop of York.	Duke of Somerset.
Lord Privy Seal.	Earl Stanhope.
Earl of Carnarvon.	Earl Granville.
Earl of Harrowby.	Lord Somerhill.
Lord Bishop of London.	Lord Lyveden.
Lord Bishop of Oxford.	
Lord Redesdale.	
Lord Colchester.	

The paragraph is again read and agreed to.

The following paragraph, prepared by the Earl Russell, is laid before the Committee by the Chairman, viz.:

"The Ecclesiastical Titles Act was considered by Parliament to be a measure not of aggression but of defence. The Pope had assumed to divide England by his own authority into dioceses, over each of which he placed an Archbishop or Bishop, with a territorial jurisdiction, and an ecclesiastical title, derived from some place within Her Majesty's dominions. This excited great indignation in the country, and in Parliament, through which the Bill was passed by large majorities."

It is then moved by the Lord *Lyveden* to insert (apparent assumption of a territorial title) after (This) in line 5 of the paragraph.

The same is objected to, and on Question negatived; and the paragraph is again read and agreed to.

Ordered, That the Committee be adjourned till Thursday, the 11th of June, One o'clock.

Die Jovis, 11° *Junii*, 1868.

LORDS PRESENT:

Lord Chancellor.	Earl Russell.
Lord Archbishop of York.	Lord Bishop of London.
Lord Privy Seal.	Lord Bishop of Oxford.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Carnarvon.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.
Earl Granville.	

The Earl STANHOPE in the Chair.

Order of Adjournment, read.

The Proceedings of the Committee of Tuesday, the 26th of May last, are read.

The Draft Report, as reprinted with the Amendments, is laid before the Committee by the Chairman.

The same is read, and is as follows, viz.:

"The Committee, in pursuance of the task entrusted to them, have examined several witnesses, and carefully considered the evidence given on the same subject before the Committee of the House of Commons last year, and now on the Table of the House.

"The enactments referred to the Committee are the 14 Vict. c. 60 (the Ecclesiastical Titles Act), passed in 1851, and Section 24 of the Act 10 Geo. 4, c. 7 (the Roman Catholic Relief Act), passed in 1829. Looking to the joint operation of these Acts, it does not appear to the Committee that they have in fact, as has sometimes been supposed, caused to the Roman Catholics any real injury in the matter of charitable donations and bequests. They may have given rise to the necessity of circumlocution in the legal deeds requisite on such occasions, but the Committee have not found any instance where the wishes of the donor or testator have failed to be fulfilled. Cases, however, have been adduced as of possible occurrence in which grievances of this kind might hereafter be actually experienced.*

"While the Roman Catholic Relief Act gave general satisfaction, and Roman Catholic Archbishops and Bishops, although forbidden to use the titles of their sees, sat on the Irish Board of National Education, it is alleged by several witnesses of great weight and authority on the Roman Catholic side, and not, so far as the Committee know, denied in any quarter, that the Ecclesiastical Titles Act has given rise to great dissatisfaction in the Roman Catholic body. That dissatisfaction is stated to be by no means confined to the prelates and priests of the Roman Catholic Church, but to extend to the laymen of their communion. That dissatisfaction, it is stated, has not passed away with the lapse of time since the enactment of 1851, but it is still keenly felt.† In Ireland it has had the effect of alienating the heads of the Roman Catholic Church from Her Majesty's Government.

"The Committee have therefore particularly inquired into the provisions of the latter Act. They find that the first clause declares and enacts that which has always been common law, and asserted to be so and confirmed by statute from a very early period. This is particularly set forth in the 16 Richard 2, c. 5, passed in 1392, nearly 500 years ago. The preamble to that Act, among other matters, sets forth that, 'Whereas the 'Commons of the Realm in this present Parliament have showed to our redoubted Lord 'the King, grievously complaining that whereas our said Lord the King, and all his liege 'people ought of right, and of old time were wont, to sue in the King's Court to recover 'their presentments to churches to which they had a right to present, the cognizance of 'the plea of which presentment belongeth only to the Kings's Court of the old right of 'his Crown, used and approved in the time of all his progenitors Kings of England; but 'now of late divers processes be made by the Holy Father the Pope, and censures of 'excommunication upon certain Bishops of England, because they have made execution 'of such commandments to the open disherison of the said Crown, and destruction of the 'regalty of our said Lord the King, his law and all his realm, if remedy be not provided; 'and also it is said that the said Holy Father the Pope hath ordained and purposed to 'translate some prelates of the same realm, without the King's assent and knowledge, by 'which translations, if they should be suffered, the statutes of the realm, should be defeated 'and made void, and so the Crown of England, which hath been so free at all times, that 'it hath been in no earthly subjection, but immediately subject to God in all things 'touching the regalty of the Crown, and to none other, should be submitted to the Pope, 'and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual 'destruction of the sovereignty of the King our Lord, his Crown, his regalty, and of all 'his realm, which God defend.'

"In accordance with the principles thus declared, the Act provides that, 'If any purchase

* Evidence of Bishop Grant, Questions 433 and the next following

† Sir Colman O'Loghlen, Questions 564 and following.

'or pursue, or caused to be purchased or pursued in the Court of Rome or elsewhere any 'such translations, processes, sentences of excommunication, bulls, instruments or any 'other things whatever which touch the King, against him, his Crown, and his regalty or 'his realm as is aforesaid, and they which being within the realm, or there receive or make 'thereof notification or any other execution whatsoever within the same realm or without, 'that they, their notaries, procurators, maintainers and abettors, fautors, and counsellors, 'shall be put out of the King's protection, and their lands and tenements, goods and 'chattels forfeit to our Lord the King, and that they be attached by their bodies, if they 'may be found and brought before the King and his Council there to answer to the 'cases aforesaid, or that process be made against them by *præmunire facias* in manner as 'is ordained in other statutes of provisors and against others which do sue in any other 'court in derogation of the regalty of our Lord the King.'

"The next statute the Committee desire to notice, is the 28 Hen. 8, c. 16, which enacts, 'That all bulls, breves, faculties, and dispensations, of what names, natures, or 'qualities whatsoever they be of, heretofore had or obtained from the Bishop of Rome, 'or any of his predecessors, or by the authority of the See of Rome, by or to any subjects, 'resiants, or bodies politic or corporate, of or in this realm, or of or in any other the King's 'dominions, shall from thenceforth be clearly void and of no value, force, strength, nor 'virtue, and shall never hereafter be used, admitted allowed, pleaded, or alleged in any 'places or courts of this realm, or of any other the King's dominions upon the pains con-'tained in the Statute of Provision and Præmunire, made in the sixteenth year of the 'Reign of King Richard the Second.'

"This Act, passed in 1536, was repealed in 1554, 1 Philip and Mary, c. 8, and revived in 1558 by 1 Elizabeth, c. 1. It therefore appears that the first section of the Ecclesiastical Titles Act, which only provides that 'All such briefs, rescripts, or letters apos-'tolical, and all and every the jurisdiction, authority, pre-eminence, or title conferred, or 'pretended to be conferred thereby, are, and shall be and be deemed unlawful and void,' does no more than declare and assert that which was law before that Act was added to the Statute Book. The Ecclesiastical Titles Act was considered by Parliament to be a measure not of aggression but of defence. The Pope had assumed to divide England by his own authority into dioceses, over each of which he placed an Archbishop or Bishop, with a Territorial Jurisdiction, and an Ecclesiastical Title, derived from some place within Her Majesty's dominions. This excited great indignation in the country, and in Parliament, through which the Bill was passed by large majorities.

"No attempt has been made to enforce the prohibitions or to levy the penalties under the section of the Act of 1829, or under the Act of 1851."

Continuation of the Draft Report as revised by the Chairman and considered by the Committee. Thursday, June 11.

"Under such circumstances, the Committee must confess themselves unable to discern how the retention of these prohibitions and penalties upon the statute book can be held to afford any security to any of our Protestant institutions.

"The opinion upon this point of the Committee is confirmed by that of laymen of great weight and authority among the Protestants of Ireland, as especially the Right Hon. Sir Joseph Napier, lately Member for the University of Dublin, and Dr. Ball, Vicar General of the Province of Armagh.*

"It appears also to the Committee no inconsiderable evil that any law should be continued when its enactments are systematically disregarded, and where it is understood that they are never to be carried into practical effect.

"The Committee think, however, that a mere repeal of these two Acts, unaccompanied by any other provision, as has sometimes been proposed, would not be sufficient nor satisfactory. They conceive that any such repeal should be accompanied by a declaration in the clearest terms of the Queen's undoubted prerogative as the Fountain of Honour, as by right the sole dispenser of territorial titles within her own dominions.

"With this object the Committee desire to call the attention of the House to the Canadian Act, bearing date May 30, 1849, and printed at length in the Appendix to the Report of the House of Commons Committee of last year. It is entitled, 'An Act to incorporate the Roman Catholic Archbishop and Bishops in each Diocese of Lower Canada;' and, having been ratified by Parliament, it is now the 12 Vict. c. 186. This Act, while it recognises the territorial titles of these prelates, as for instance, 'The Right Reverend Joseph Signay, Roman Catholic Archbishop of Quebec;" or, 'The said Joseph Signay and his successors, being Archbishop of Quebec aforesaid, in communion with the Church of Rome,' contains the following clause:

"'And be it enacted that nothing herein contained shall affect, or be construed to 'affect, in any manner or way, the rights of Her Majesty, Her heirs or successors, or of any 'person or persons, or of any body politic or corporate, such only excepted as are herein-'before mentioned and provided for.'

"It has been stated to the Committee, by high authority upon the Roman Catholic side,

* Questions 317, 321, 322, &c.; also Questions 363 and 364.

side, that a clause of similar import in any Bill to repeal the two statutes that are now complained of, would be considered free from all objection, and 'perfectly satisfactory.'*

"The Committee think, however, that in the clause which they would desire to see inserted, the Queen's undoubted prerogative shall be set forth in more clear and positive terms.

"The Committee are further of opinion that in such a repealing Act as they have described there should be another clause, fixing for purposes of legal description the proper mode of desiguation applicable to Roman Catholic Prelates.

"Several forms for such designation that seem free from difficulty, might be suggested. A witness of considerable weight, the Right Hon. Mr. Justice O'Hagan, in his evidence before the House of Commons Committee, referred to the Canadian precedent, as naming A. B., Archbishop of Quebec, in communion with the Church of Rome, and he added: 'I see no objection on my own part to some such designation; and for my own part, as a Catholic, I have no objection to be described, or have a bishop described as a 'Roman Catholic,' that is, a member of the one Church Catholic in communion with the Holy See.'†

"Sir Colman O'Loghlen, as a witness before the present Committee, concurred in approving the form contained in the Canadian Act, as 'A. B., Archbishop of Quebec, in communion with the Church of Rome,' and added only: 'If I had been drawing the Act I would have put in 'with the See of Rome;' but that is a mere technical objection, and I do not think that anybody would object to it."

* Sir Colman O'Loghlen, Questions 605 and 606.

† Report of Commons Committee, Question 61.

Question 587.

It is proposed by the Lord Chancellor to insert the following paragraph after "(1851)",—in line 36 of the previous page, viz.:

"(The Committee, however, are not of opinion that these enactments, and more especially the Act of 1851, have been ineffectual; they were a plain and emphatic assertion by the Legislature of the constitutional authority and supremacy of the Sovereign, and there has not since 1851 been any general or ostentatious infraction of the enactment of that year by those against whom it was directed.)"

The same is read, and it is proposed to leave out from the beginning of the paragraph to "(they)" in line 2. Objected to.

On Question, That the words proposed to be left out stand part of the paragraph;

Content.	Not Content.
Lord Chancellor.	Earl Stanhope.
Lord Archbishop of York.	Earl of Carnarvon.
Lord Privy Seal.	Earl Granville.
Duke of Somerset.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.
Earl Russell.	
Lord Bishop of London.	
Lord Redesdale.	

It is then moved by the Earl Russell to leave out "(general)" in line 4, and to insert "(open)" in lieu thereof. Objected to.

On Question, That the word proposed to be left out stand part of the paragraph:

Content.	Not Content.
Lord Chancellor.	Earl Russell.
Lord Privy Seal.	
Duke of Somerset.	
Earl of Harrowby.	
Lord Bishop of London.	
Lord Redesdale.	
Lord Colchester.	
Lord Somerhill.	

The paragraph is again read, and objected to.

On Question, "That the paragraph stand part of the Draft Report:"

Content.	Not Content.
Lord Chancellor.	Earl Stanhope.
Lord Privy Seal.	Earl of Carnarvon.
Duke of Somerset.	Earl Granville.
Earl of Harrowby.	Lord Bishop of Oxford.
Earl Russell.	Lord Lyveden.
Lord Bishop of London.	
Lord Redesdale.	
Lord Colchester.	
Lord Somerhill.	

It is then proposed by the Chairman, that the following paragraph stand part of the Draft Report, viz.:

"(Under such circumstances, the Committee must confess themselves unable to discern how the retention of these prohibitions and penalties upon the Statute Book can be held to afford any security to any of our Protestant institutions."

The same is objected to, and it is moved by the Lord Chancellor to insert the following paragraph, in lieu of the one proposed by the Chairman, viz.:

"(It has been suggested, that the object of the Act of 1851 would have been sufficiently attained by a simple declaration of the invalidity of any assumption of ecclesiastical titles of honour, or of any attempt to confer coercive jurisdiction otherwise than under the authority of Her Majesty, and according to the laws of the realm, unaccompanied by the enactment of any penalties.) But the Committee are of opinion that while a mere repeal of the section of the Act of 1829 and of the Act of 1851, would be open to misconstruction, and therefore inexpedient, any advantage to be gained by a modification of those enactments in the manner above indicated, would be more than counterbalanced by the evil of re-opening, without any sufficient cause, the discussion of a question always calculated to occasion much irritation of feeling."

On Question, "That the paragraph proposed by the Chairman stand part of the Draft Report:"

Content.	Not Content.
Earl Stanhope.	Lord Chancellor.
Earl of Carnarvon.	Lord Archbishop of York.
Earl Granville.	Lord Privy Seal.
Lord Somerhill.	Duke of Somerset.
Lord Lyveden	Earl of Harrowby.
	Earl Russell.
	Lord Bishop of London.
	Lord Bishop of Oxford.
	Lord Redesdale.
	Lord Colchester.

The paragraph proposed by the Lord Chancellor is again read, and objected to.

On Question, "That the paragraph stand part of the Draft Report:"

Content.	Not Content.
Lord Chancellor.	Earl Stanhope.
Lord Archbishop of York.	Earl of Carnarvon.
Lord Privy Seal.	Earl Granville.
Duke of Somerset.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.
Earl Russell.	
Lord Bishop of Oxford.	
Lord Redesdale.	
Lord Colchester.	

The remaining paragraphs of the Draft Report are then read, and negatived.

On Question, "That the Draft Report, as amended, be agreed to:"

Content.	Not Content.
Lord Chancellor.	Earl Stanhope.
Lord Archbishop of York.	Earl of Carnarvon.
Lord Privy Seal.	Earl Granville.
Duke of Somerset.	Lord Bishop of London.
Earl of Harrowby.	Lord Somerhill.
Earl Russell.	Lord Lyveden.
Lord Bishop of Oxford.	
Lord Redesdale.	
Lord Colchester.	

Ordered, That the Committee be adjourned till Tuesday next, Four o'clock.

Die Martis, 16° *Junii*, 1868.

LORDS PRESENT:

Earl Stanhope.	Lord Colchester.
Lord Redesdale.	Lord Somerhill.

The Earl STANHOPE in the Chair.

Order of Adjournment read.

The Proceedings of the Committee of Friday last are read.

The Draft Report is again read; some verbal amendments are made therein, and the same as amended is agreed to.—(*Vide* the Report.)

Ordered, That the Lord in the Chair do make the said Report to the House.

MINUTES OF EVIDENCE.

LIST OF WITNESSES.

Die Veneris, 24° *Aprilis*, 1868.

Die Martis, 28° *Aprilis*, 1868.

Die Martis, 5° *Maii*, 1868.

Die Martis, 12° *Maii*, 1868.

Die Veneris, 24° Aprilis, 1868.

LORDS PRESENT:

Lord Chancellor.	Earl Granville.
Lord Archbishop of York.	Earl Russell.
Lord Privy Seal.	Lord Bishop of London.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Harrowby.	Lord Lyveden.

The Earl STANHOPE, in the Chair.

Mr. WILLIAM GERNON, is called in; and Examined, as follows:

1. *Chairman.*] YOU are, I think, Secretary to the Irish Charity Commission? Mr. *W. Gernon.*

I am. It is known in Ireland by the name of the Board of Charitable Donations and Bequests. 24th April 1868.

2. That Board has, as I understand, two secretaries?
It has.

3. You are the Roman Catholic secretary, are you not?
I am the Roman Catholic secretary.

4. Who is the other secretary?
Mr. Hercules Macdonnell is the Protestant Secretary.

5. Is he a member of the Established Church?
He is a member of the Established Church.

6. How long has that Board been in existence?
It was constituted under the 7 & 8 Vict. c. 97, in the year 1844?

7. And how long have you been secretary to it?
I was appointed secretary in the year 1856.

8. Is it a salaried office?
It is.

9. Does the appointment rest with the Crown?
With the Lord Lieutenant of Ireland. I was appointed by Lord Carlisle in the year 1856.

10. What are the powers of that Board?
It is somewhat analogous to the English Board of Charities, except that the Commissioners are all unpaid, and many of them are judges. The Master of the Rolls is *ex officio* the chairman of the Board, and the Chief Baron of the Exchequer is *ex officio* vice chairman. There are 10 persons appointed by the sign manual of the Queen, and by the Act of 1844 five of them must at all times be persons professing the Roman Catholic religion; and though the statute itself does not contemplate the appointment of two secretaries, it has always been found, since the passing of the Act, that it gave greater confidence to the two religious denominations to have two secretaries of co-ordinate rank, status, and salary, belonging to each of the two principal religious communions.

Mr. *W. Gernon.*

24th April 1868.

11. We may presume then that the Roman Catholic bequests pass through your hands, and that those connected with Protestants or with the Established Church pass through the hands of the other secretary?

Not necessarily; the general rule is, that Mr. Macdonnell, my brother secretary, and myself, take the cases as they come in rotation into the office; but if there is any question affecting the religious tenets of either Protestants or Roman Catholics, if it be a Protestant case, I usually place it in the hands of my brother secretary; and in the same way my brother secretary places an exclusively Roman Catholic charity in my hands to be worked out.

12. If therefore there be a charitable bequest, it has to be referred to this Board?

The powers of the Board, under the 7 & 8 Vict. c. 97, only deal with charities which have been, in the words of the Act, "concealed, withheld, or misapplied."

13. *Lord Archbishop of York.*] Is that Board analogous to our Charity Commission in England?

Very much so, except that the Commissioners are all unpaid in Ireland. The secretaries are the paid heads of the department in Ireland.

14. *Chairman.*] Have you had occasion to observe the position of the Ecclesiastical Titles Bill in Ireland?

One case has come under my knowledge as Roman Catholic secretary, of which, if their Lordships wish, I will detail the facts. Perhaps I ought to state that, there being a Protestant secretary and a Roman Catholic secretary, though the Act does not contemplate it, they have, with one exception, been members of the bar. It has been found that the Act of Parliament deals with almost strictly legal matters, and for this reason the two secretaries have been members of the Irish bar. As we always know our cases in the office by the name of the testators leaving the charities, we usually designate them by those names, and the charity to which I would call the attention of your Lordships is known in the office by the name of "George Hildebrand's Charity."

15. Will you give the date of it?

I have not taken down the date of the bequest.

16. *Lord Archbishop of York.*] Is it an old bequest?

It is not an old bequest.

17. *Chairman.*] What is the date of the proceedings upon it?

In 1865 it came before our Board. Mr. George Hildebrand was a gentleman who lived in the town of Westport, in the county of Mayo, in Ireland, and by his will he left a charitable bequest of 100 *l.*, 70 *l.* of it to be paid to the parish priest of Westport, for the Roman Catholic poor of Westport, and 30 *l.* to be paid to the Protestant rector, for the benefit of the Protestant poor of Westport. It seemed that the executrix of the will of Mr. Hildebrand was not discharging her duty by paying over the bequest to the proper parties, and a complaint was made to the Board of Charities in Ireland, through me, as its secretary, stating that this sum was due, and remained unpaid. I brought the matter before the Board; and there is a rule of our Board, which I may say is uniformly acted upon, that if a bequest is made to a rector of the Established Church, or to a parish priest of the Roman Catholic Church, we do not recognise either of those gentlemen without a certificate under the hand of the Bishop of his diocese; so that if there be any flaw, canonical or otherwise, in the party holding the place, we must have it under the hand of the Bishop that he is rightly there before we pay him the bequest. It was in this way that the matter came, I may say, to clash, as far as I could see, with the Ecclesiastical Titles Act. When I brought the matter before the Board it was stated that the parish priest of Westport had lately died, and we were at a loss to discover whether the parish had been filled up or not. The Board directed me, as usual, to act under their minute, a copy of which I will read to your Lordships: "In the case of George Hildebrand's Charity; Board meeting, 11th May 1865. Mr. Secretary Gernon read letter from Mr. Hildebrand, saying that his mother was prepared to pay the legacy of 100 *l.*, and also a letter from Mr. Neal Davis, solicitor for Mrs. Hildebrand, inquiring to whom same was to be paid, inasmuch as there was no parish priest in Westport, and that it was a mensal parish, and adding that the Venerable Archdeacon, J. Cather, was the Protestant

Protestant rector. Will read, bequeathing 70 *l.* to the parish priest, and 30 *l.* to the Protestant rector for the use of the poor. Sixth section of Board's Act read, and at the suggestion of the Roman Catholic commissioners present, it was ordered, that a communication be made to the Roman Catholic Archbishop, forwarding to him an extract of the will, with a request that he would be good enough to certify to whom the bequest of 70 *l.* is to be paid." Acting upon that order of my Board, I ascertained that Archbishop M'Hale was the Bishop who had ecclesiastical jurisdiction in the town of Westport. At the time of the making of the minute, which I have taken the liberty of reading to your Lordships, he was in Rome, and I had to wait a month for his return. Having heard that he was in Dublin, on his way from Rome, I waited on him at his hotel, and I said to him, "My Lord, I have come for the purpose of asking your certificate as to who the party is that is now the parish priest of Westport." He asked me who I was. I had not any previous acquaintance with Archbishop M'Hale, and I told him I was the Roman Catholic Secretary of the Board of Charities in Ireland, and that by a uniform rule of the Board we required the certificate of the Bishop before we could recognise a parish priest. His answer was, "I am now, myself, the parish priest of Westport." It seems that after the death of the parish priest, whose death I have previously referred to, the parish had been converted into what is called a "mensal" parish; it is taken from the Latin word *mensa*, and is supposed to be a parish contributing to the table, or the income of the Bishop of the diocese, who thereupon becomes parish priest of that particular parish, and it is usual, and I believe it is uniformly the rule in Ireland, that every Roman Catholic Bishop has one or two mensal parishes assigned to him, in which there is no parish priest, but an administrator of the Bishop.

18. *Lord Archbishop of York.*] That is to say, there is a priest acting for the bishop?

Yes.

19. *Chairman.*] Do those parishes supply the bishop's income?

They partially supply his income; they are supposed to contribute to his income. Then, finding that this was rather a peculiar case, I said to the Archbishop "Will your Grace be kind enough to certify in writing to me that you are now the parish priest of Westport, in order that we may have this bequest of 70 *l.* for the poor paid over to you?" He sat down and wrote a certificate, that certificate being in terms that he had been appointed by his Holiness the Pope to the parish of Westport, and that, as such, he was the parish priest, and entitled to receive the bequest of 70 *l.* And he signed the certificate, "John H'Hale, Archbishop of Tuam." I looked at the certificate. I read it, and said to him, "My Lord, it is a painful thing for me, as a Catholic, to have to tell your Grace that I cannot accept this certificate from you." He said, "Why not?" I replied, "Because, my Lord, though fully recognising in my conscience, as a Catholic, your Grace's right to be Archbishop of Tuam, I feel as an officer of the Government Board, which is a mixed Board, composed of Roman Catholics and Protestants, that I cannot place before my Board a document that has illegality upon the face of it. It seems to me to be a direct contravention of the Ecclesiastical Titles Act; and, however painful it may be to myself personally, I am compelled, in the exercise of my official duty, to decline accepting that certificate from your Grace." He said, "I will give you no other." "Well, my Lord," I said, "You place me in a very uncomfortable position." He said, "What right has your Board to refer to me for a certificate as to who the parish priest of Westport is, and then, when I come to sign the certificate, showing the diocese to which I belong, and the parish to which the priest belongs, to say that you ignore my jurisdiction?" I said, "Unfortunately, my Lord, that is not for me to determine; whether rightly or wrongly, there is a statute upon the statute book that imposes upon me the painful and disagreeable necessity of declining this certificate." The Archbishop again said, "I will give you no other." I then said, "Then, my Lord, the position of things will be this: I fear that the bequest will be locked up from the poor; the poor of Westport will suffer to the extent of this 70 *l.*, and you will place me, as a Catholic, in a very painful position with a Government Board, of either, perhaps, being reprimanded by the Master of the Rolls, the chairman, for presenting an illegal document, if I do present it, or of reporting to my Board that I can get no certificate, except such a one as I could not legally receive; and the poor would

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then be deprived of that bequest." His answer was, "In one sense, I should regret that result on account of the poor, but in another I should not regret it, because it is an illustration of the absurdity of the Ecclesiastical Titles Act." I then made a personal appeal to his Grace, and I said, "I ask you, my Lord, not to place me in a position that would be very painful to me, that of bringing this matter forward, and to give me a certificate, omitting your territorial title."

20. *Lord Archbishop of York.*] Signed as Archbishop?

Signed as "John M'Hale." He considered a little, and then turned to me, and said, "I have a respect for your position; I know your position would be a peculiar one as a Catholic if I persevered in this course, and I will therefore give you a certificate, omitting my title, but I will not omit the words that I have been appointed parish priest by his Holiness the Pope." "Well," I said, "my Lord, that is for you. I have no objection that those words should be in, and if the Board, with the Master of the Rolls as its chairman, accepts that certificate, of course I am quite willing that it should be placed upon our minutes." He said: "No one but the Pope can appoint a Bishop to a mensal parish, because the Bishop himself appoints the parish priest, but the Bishop cannot appoint himself to a mensal parish, and therefore he must be appointed by a superior authority."

21. It is the suppression, as it were, of the position of a parish priest?

It is the absorption of the parish, if I may so explain myself. Thereupon the Archbishop gave me the certificate. I have the original certificate in my hands in these words: "Saint Jarlath's, Tuam, June 22nd, 1865. I hereby certify that the parish of Westport has been conferred on me by his Holiness the Pope as a mensal parish, which appointment authorises me to give a valid discharge for the bequest of 70 *l.* left by the late Mr. George Hildebrand to the Catholic poor of Westport;" and it is signed in the usual way that Roman Catholic Bishops sign in Ireland, with a cross before their names, "John M'Hale." Having got that certificate upon the 22nd of June, on the same day, I think, there was a Board meeting, and on that same day I brought this certificate before the Board. The Master of the Rolls, I believe, was in the chair, but I am not quite sure; however, there was a quorum of five, and this minute was passed: "Mr. Secretary Gernon read a certificate from Archbishop M'Hale, stating that he had been appointed by his Holiness the Pope to the parish of Westport. Ordered, that the bequest of 70 *l.* to the parish priest of Westport may be legally paid to Archbishop M'Hale;" and thereupon it was remitted to the Archbishop, and the case concluded in that way. I did feel, certainly, after that incident, that I had been placed in a very unpleasant and painful position.

22. The having a certificate of the Bishop is a regulation of the Board, I presume, and not of the statute?

I think I may answer your Grace's question by stating that it is a regulation of the Board. The 6th section of the 7 & 8 Victoria refers all questions concerning the usage or discipline of the Protestant and Roman Catholic Churches to a committee composed exclusively of the members of those Churches; but there is an uniform rule of the Board, which I found in existence when I was appointed Secretary 12 years ago, that whether it be a Protestant rector or a Catholic parish priest, the Bishop of the particular diocese is uniformly referred to before the party is recognised as competent to receive the bequest.

23. You must have had the case before, or since; I suppose this is not an isolated case?

That is the only case in which I was brought so directly into collision as to be compelled to refuse a certificate from a Bishop of my own church.

24. Have you had other certificates about the same kind of thing?

It is entirely optional with any Bishop how he will frame the certificate. We merely require to see that the party is recognised by his Bishop as the proper party to receive the bequest; and having got the certificate from the Bishop, we immediately enter it on our minutes, and then we immediately recognise the party as parish priest or rector, as the case may be.

25. If you had written to the Archbishop, and he had returned that signature "Archbishop of Tuam," how would the Board have treated it then?

I think

I think if I had received it by the post from the Archbishop, my first impulse would have been to have returned it to his Grace, precisely as I did when he handed it to me on account of what appeared to me to be its contravention of the statute.

26. What I really want to discover is, how the Board had treated any other case where the certificate had been sent in without the precaution which was used in that particular case?

I am not aware of any other case in which the same circumstances occurred.

27. *Lord Privy Seal.*] Have you ever known any legatees lose their legacies in consequence of the contravention of this Act?

Not strictly speaking in consequence of the contravention of this Act, but I intend, with your Lordships' permission, to go into other branches where I find that Catholic trusts have a good deal suffered by want of corporate succession, or a recognition in some respect of the Catholic Archbishops and Bishops.

28. *Lord Bishop of London.*] Have you had other certificates from other Bishops signed in the ordinary way?

Yes, signed in the way that this is.

29. From almost every diocese in Ireland, I suppose?

They are not very frequent, but I think that we certainly have had certificates from Cardinal Cullen in which he has signed himself "Paul Cardinal Cullen," and that has been recognised by the Board.

30. No other Bishop, in fact, has made any objection, except Archbishop M'Hale?

I cannot remember that any other has.

31. *Chairman.*] But the signature of Cardinal Cullen, as Cardinal, would, I apprehend, not be a contravention of the Ecclesiastical Titles Act, for that Act says nothing of Cardinals?

I presume not, and hence within the last three or four weeks, in a charity known as "Roger Palmer's Charity," a parish being vacant in the diocese of Dublin, and Cardinal Cullen having presented a parish priest to it, I asked his Eminence for a certificate, which he gave me, as "Paul Cardinal Cullen." I presented that to the Board, and no objection was made. It certainly did not occur to me to be in contravention of the statute.

32. *Lord Archbishop of York.*] It is not contended, is it, that since the passing of the Ecclesiastical Titles Act, those certificates have been stopped; how has the case been treated when it has arisen before, because there must have been many of those certificates?

I think I may say that this is the only case where the Bishop signed his name by the territorial title.

33. Earl *Russell.*] If that first document to which you adverted had been signed "John M'Hale, Archbishop," would the Board have received it?

I think so, and perhaps I ought to say that I think many of the Roman Catholic Bishops sign themselves "Archbishop" or "Bishop," stopping there. I could not be quite clear upon that point, but I could quite readily ascertain it.

34. Duke of *Somerset.*] You have been secretary since the year 1856 to the present time, have you not?

I have.

35. And between the date of 1856 and the present time, you have found no difficulty of this kind, except in the case of George Hildebrand's Charity?

Not directly conflicting with the Ecclesiastical Titles Act.

36. And that difficulty might have been got over if the Archbishop had consented to sign himself "Archbishop and parish priest," without putting Archbishop of a special diocese?

It was eventually got over in that way.

37. Therefore, in point of fact, there was no practical grievance?

If your Lordships will permit me to say so, I certainly did feel it to be a practical grievance upon myself, as a Roman Catholic official, that I should have been brought into direct collision with an Archbishop of my own church,

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in a matter affecting his spiritual jurisdiction. I did feel that, co-ordinate as I am in every other respect with my brother secretary in this matter, we were not on an equal footing.

38. *Lord Privy Seal.*] You have not answered my question quite directly, as to whether you have ever known any legatee lose his legacy in consequence of the Ecclesiastical Titles Act?

Not directly in consequence of the Ecclesiastical Titles Act, but there is another branch of the subject in which I could, with your Lordships' permission, deal with that point.

39. *Lord Bishop of London.*] I understand that Archbishop M'Hale at last signed in the way in which he was usually in the habit of signing all other public documents. He might have signed his name in the way in which it always appears before the public, and no remark would have been made?

I apprehended so, and eventually he did so on my personal appeal.

40. Earl *Russell.*] Were you secretary to that Board when there were a Roman Catholic Archbishop and a Roman Catholic Bishop, members of the Board?

I was not, I think.

41. Do you remember how Archbishop Crolly (I think it was) signed in general?

I do not, but I have here with me, among the documents, a copy of Her Majesty's Royal warrant, appointing the first Commissioners, and it appoints the Roman Catholic Archbishops in these words: "Our right trusty and well-beloved the most Reverend Archbishop William Crolly, and the most Reverend Archbishop Daniel Murray." Those are the words used in Her Majesty's first warrant appointing the Commission.

42. *Chairman.*] There were Roman Catholic prelates on that Board at one time, were there not?

There always had been up to the death of the last Bishop who was on the Board, which occurred within the last two years. There were three Roman Catholic Bishops, namely, two Archbishops and a Bishop in the first warrant appointing them.

23. Has there been none appointed since the decease of the last?

There has been none appointed since the death of Bishop Denvir, who was the last of the Roman Catholic Episcopacy upon the Commission.

44. *Lord Archbishop of York.*] Have the places remained vacant, or have they been filled up?

They have been filled up by Roman Catholic laymen.

45. Lord *Redesdale.*] Have they been offered to any Roman Catholic prelates?

I think one place was offered to a Roman Catholic Dean, but he declined accepting it.

46. *Lord Archbishop of York.*] On other grounds which had nothing to do with this Act?

I apprehend not.

47. *Chairman.*] So far as you know, no offer has been made to any Roman Catholic prelates to fill the places left by the Roman Catholic prelates deceased?

Officially I am not able to answer that question; the usage is this, the moment a vacancy occurs we communicate with the Irish Government, and they get into communication with parties; and whether they have made such offers or not, I am not able, officially, to say. I am aware that a Roman Catholic Dean was offered a seat on the Board, and I think it was the place vacated by Bishop Denvir.

48. *Lord Bishop of London.*] Am I to understand that at the time Archbishop M'Hale made this difficulty there was a Roman Catholic Bishop on the Board, signing in the ordinary way?

There was no Archbishop on the Board. Archbishop Murray and Archbishop Crolly were both dead.

49. Was there no prelate on the Board at the time?

I rather think Bishop Denvir was a member of the Board at the time.

50. How

50. How does he sign his name?
He had no occasion to sign his name, because he was merely attending as a member.

51. *Chairman.*] Is there any other branch of the subject upon which you are prepared to give the Committee information?
Another point arose in a charity, which we know in the office as the Charity of Matthew Beggs. I stated to your Lordships that we always entitle a charity by the name of the testator who leaves the bequest. Mr. Matthew Beggs left the sum of 100*l.* to the Most Reverend Dr. Cullen, Roman Catholic Archbishop of Dublin, in trust, for the improvement of the chapel of Ratoath, in the county of Meath.

52. What was the date of those proceedings?
It certainly was within the last four years. The Most Reverend Dr. Cullen, fearing that if he put that money into the bank or invested it in his own name, and then died, it might be taken as a portion of his personal assets, without being earmarked for the purpose of a charity, placed the money in the Hibernian Bank, in Dublin, in the joint names of himself and the Reverend Patrick Sheridan, who was at the time parish priest of Ratoath; and a committee was appointed, for the purpose of carrying on the repairs of the chapel. The parishioners collected a certain sum for the purpose, and in their contract with the builder they calculated upon this sum of 100*l.*, which was then standing in the names of the Most Reverend Dr. Cullen and the Reverend Patrick Sheridan. During the progress of the works of the chapel the Reverend Patrick Sheridan, for some canonical fault, of the nature of which I am not aware, was suspended from duty and from his office by his Bishop, and an administration *ad interim* was appointed to take charge of the parish. When this money was required for the purpose of the contract, which was then completed by the builder, the administrator *ad interim* applied to the Most Reverend Dr. Cullen for the sum of money which was then in the bank. Dr. Cullen expressed his entire readiness to pay it out for the purpose, and he applied to the Rev. Patrick Sheridan to join him in doing so, as it could not then be released without both names. The Rev. Mr. Sheridan objected to do so. He said that he had not been consulted in the works, and that he thought that he ought to have had a voice in them, and that he would not give any assistance in releasing this money. The money was therefore locked up in the bank. A great deal of correspondence took place, and a great many applications on the part of the parish of Ratoath were made to Archbishop Cullen (who was not then Cardinal), he always expressing his readiness to pay out the sum, but Mr. Sheridan still refusing to join him. At length the administrator of the parish made a complaint to my Board, and said: "The works are complete; we are pressed for payment by the contractor of this 100*l.*; we are paying him interest upon the sum, and it is improperly locked up, and we cannot get at it, and therefore I contend that it is a case which your Board is competent to deal with as a withheld charity." I brought the matter before the Board, and the Board conceiving that a question of ecclesiastical jurisdiction might arise in reference to the suspension of the Rev. Mr. Sheridan, referred the case to the members of the Roman Catholic communion, and there were several conferences held, in which Chief Baron Pigott, Judge Fitzgerald, Baron Hughes, and I think Mr. Ennis (now Sir John Ennis), took part. At length the Chief Baron drew, with his own hand, a very elaborate report, stating all the facts of the case to the Board, and giving it as the opinion of the four Roman Catholic Commissioners, all of whom, I think, signed the report, that Dr. Cullen, though he had taken the course, for the security of the fund, of associating the name of the parish priest with him, was technically guilty of a breach of trust in having brought in a stranger into the trust with him; and they advised the Board to get the secretary to write a formal notice to the Most Rev. Dr. Cullen, stating that unless by a certain day the money was released, they would be compelled to take proceedings in the Court of Chancery against Archbishop Cullen as the sole trustee under the will. A similar letter was written to the Rev. Mr. Sheridan, stating that, in consequence of his perverseness in not co-operating with the Archbishop in getting out the money, the Board join him as defendant in the suit, and would seek to make him liable for the costs of the proceedings. Under the threat of that notice,

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notice, the Rev. Mr. Sheridan joined Archbishop Cullen in getting out the money, and it was paid over to the builder. I cite that case to show your Lordships the difficulty in which Archbishop Cullen was placed by being driven to the expedient of joining another name with his own, an act which the Roman Catholic Commissioners held, though done for the purpose of securing the fund, was a technical breach of trust.

53. Lord *Redesdale.*] In what way was that affected by the Ecclesiastical Titles Act?

I think I stated to your Lordships that it was not directly affected by the Ecclesiastical Titles Act; but I asked whether I was at liberty to go into other branches.

54. *Lord Archbishop of York.*] This difficulty would have arisen exactly in the same manner before the Ecclesiastical Titles Act passed, would it not?

I apprehend so.

55. It would have arisen 50 years ago just the same?

I apprehend so. I have another instance, similar in principle to the one which I have just mentioned to your Lordships, if I may be permitted to mention it.

56. Is there any instance in Ireland, so far as you are aware, where a charitable bequest has failed from its being made contrary to the provisions of the Ecclesiastical Titles Act?

I cannot say that I recollect any case in which it has failed; but the next case, of which I have taken a summary, approximates very closely, though I will not say it goes into the confines of the Act itself.

57. *Chairman.*] The question is not merely whether there has been an absolute loss of bequest, or what we should call a denial of the intention of the testator or donor, but whether you are aware of any inconvenience or legal proceedings which might have been avoided but for this Act, confining yourself to the operation of the Ecclesiastical Titles Act, and the clause of the Roman Catholic Relief Act which prohibits the titles being borne in Ireland by the prelates of the Roman Catholic Church?

I would ask your Lordships' permission to state the next case of which I have taken a note, and your Lordships would then be able to form an opinion whether it came within the scope of your reference.

58. Earl *Russell.*] Have you paid attention to that part of the Ecclesiastical Titles Act which contains a reservation of all the provisions of the Act of 1844 for the more effectual application of charitable donations and bequests in that part of the United Kingdom, and the mode in which those bequests may always be made good?

I am aware of that provision in the Ecclesiastical Titles Act. The next case to which I would ask your Lordships' attention is the case known as the Charity of the Reverend Matthew Tierney. The Reverend Matthew Tierney was a parish priest in the diocese of Kildare (or, as it is known in Ireland, Kildare and Leighlin), and that gentleman made his will, in which he says: "I will and bequeath all the property I may die possessed of at the time of my death to the Right Rev. Dr. Haly" (who was then the Roman Catholic Bishop exercising jurisdiction in that particular diocese), "to be disposed of by him in the most charitable way he may think fit." The circumstances of that case were these: that will being in existence, the testator died without revoking or altering it, and left assets to the extent, I believe, of about 800*l.* or 900*l.* I think they were sworn at about 800*l.* The Bishop whom he nominated as his executor, trustee, and sole legatee, died in the lifetime of the testator, and the testator, though he outlived the Bishop many years, did not proceed, either by codicil or otherwise, to appoint any new executor. The immediate successor of the Right Reverend Bishop Haly presented a memorial to the Board of Charities in Ireland, in which he says, "That Matthew Tierney, late parish priest of Coragh and Prosperous, in the county of Kildare, deceased, departed this life on or about the ( ) day of December 1857. That the property of which the said deceased died possessed consists of a balance in the Bank of Ireland of about 550*l.*; of household furniture, &c., the value of which is about 147*l.*; of stock, the value of which

which is about 91*l.* 5*s.*; of plate, the value of which is about 20*l.*; of monies in said deceased's house to the amount of 54*l.* 6*s.*; a bond debt, upon which there is due about 250*l.*; and money in the hands of F. Dowling to the amount of about 30*l.*; out of which he owed about 173*l.* That said deceased, previously to his death, duly made and executed his last will and testament in writing, bearing date the 12th day of February 1839, whereby he bequeathed all the property of which he should die possessed, after payment of his lawful debts and funeral expenses, unto the Right Reverend Francis Haly, late Roman Catholic Bishop, to be disposed of by him in the most charitable way he may think fit, reserving as much as would put a slab over him in the chapel of Coragh, and thereof appointed him, the said Right Reverend Francis Haly, his sole executor. That said Right Reverend Francis Haly departed this life on the 19th day of August 1855, in the lifetime of the said Reverend Matthew Tierney. That memorialist is advised, and believes, that notwithstanding the death of said Right Reverend Francis Haly, the trust of said will survives. That memorialist, as the successor of said Right Reverend Francis Haly, is anxious to obtain letters of administration with said will annexed of said deceased, in order to comply with the wishes of said deceased, and to distribute his said property amongst such charities as may be most in need of same. ✠ *James Walshe.*" The Minute of the Board of the 26th January 1860 is this: "Reverend Matthew Tierney's; Mr. Secretary Gernon read memorial from the Right Reverend Bishop James Walshe, at present officiating as Roman Catholic Bishop in Kildare, stating that the testator had left a considerable bequest for charitable and pious purposes, and had appointed the late Right Reverend Bishop Haly as executor, who had died in the lifetime of the testator: that memorialist had succeeded the late Bishop Haly as Roman Catholic Bishop, and prayed that for the protection of the charity execution of testator's will might be granted to him as successor. Ordered, that secretary inform Bishop Walshe that his memorial does not disclose a case upon which the Commissioners can legally interfere." Our Board felt that they could not assist the Bishop in taking out administration to a will, dealing altogether with charity property, and left to his immediate predecessor; but I believe the result of that case was, that after the lapse of five years, or so, Bishop Walshe, by the favour of the Attorney General of the day, obtained the consent of the Crown to his taking out administration; and that he did after that lapse of time get administration to this will, and I believe got the property and disposed of it.

59. *Lord Archbishop of York.*] Would not the position of a Protestant clergyman in Ireland be precisely the same? If I give and bequeath to the Reverend John Smith 100*l.* to be disposed of in charitable uses, and the Reverend John Smith dies, and the Reverend Edward Jones succeeds him, the Reverend Edward Jones would not make out any title to that money, would he, the Reverend John Smith dying in the lifetime of the testator?

I apprehend that in that case the successor of the rector would not have any right to administer to that will.

60. So that Bishop Walshe has done better than my imaginary Reverend John Smith would have done?

But he did it by favour of the Attorney General representing the Crown.

61. Lord *Redesdale.*] Supposing it had been left to any specific Bishop of the Established Church, a bequest of that kind would not have been made to the successor of the Bishop, and if the words used were "to him or to his successors in the see," it would have done; and so in this case, if he had left it "to the Right Reverend Dr. Walshe or to the person succeeding him in ecclesiastical jurisdiction in the district," it would then have gone to the person succeeding him; but he left it personally to an individual, and if that individual had been a Bishop of our own Church, in like manner it would have been the executors of that Bishop, who would have been the executors of that money?

Perhaps so.

62. Earl of *Harrowby.*] Is your case this: that the testator was in this case driven to the expedient of leaving it to the individual, and not to the office, because the office was not recognised by law?

I can scarcely say, except from what the testator himself discloses upon the face of his will, what was passing in his mind; but Bishop Walshe seemed to

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contend very strongly at the time that his intentions were to leave it to the Bishop of the diocese, and to constitute the Bishop his sole successor, whoever he might be.

63. But would it have been competent under the existing law for the testator to have left the legacy to the occupier of the office, and not to the individual?

I apprehend that he could have left the trusts to the existing Bishop, or to any person who might be Bishop of that diocese for the time being.

64. But how would he have specified the diocese occupied by the Bishop?

There would have been his difficulty. The difficulty in the testator's mind, I apprehend (though I do not know whether it was in his mind when he made this will, because, of course, the will only speaks for itself), would have been the description of the Bishop as Bishop of Kildare and Leighlin.

65. And in that difficulty, of course, he had to leave it to the individual, and then the question arose whether it could go to the office?

Yes, or to the next of kin, or to the Crown.

66. *Chairman.*] Would your Board consider, as rendering the bequest invalid, a description of the person which was contrary to the law; if, for instance, a Roman Catholic testator bequeathed a certain sum to an individual whom he named, and then described him as Archbishop of Tuam, would your Board think it necessary to deny that bequest, on the ground that the law did not recognise such an individual as was named in truth to be Archbishop of Tuam?

No case of the kind has come before the Board; but I apprehend that, by reason of the passing of the Ecclesiastical Titles Act, professional men in drawing wills have very assiduously steered clear of that difficulty by describing Roman Catholic Bishops as parties "who exercising spiritual jurisdiction" in such and such a place.

67. Then, practically, no such difficulty in the case of an unlettered man being a testator has come before you?

A case has never come before our Board in which a bequest was left to "John Archbishop of Tuam," for instance.

68. *Lord Archbishop of York.*] I presume you do not contend, what was a little suggested, that the testator having left it by name to a person who died during the testator's lifetime, was precluded from carrying out his benevolent intention, because of the passing of the Ecclesiastical Titles Act in the meantime?

I think that but for the aid of the Crown in this particular case, the next of kin or the Crown would have claimed, and successfully claimed, this money.

69. As in the case of the Protestant clergyman, in my imaginary instance?

Perhaps so.

70. Earl *Granville.*] There is no doubt that in the one case there would be no inducement to leave it to the Protestant clergyman by his name; whereas there would be an inducement, on account of the Ecclesiastical Titles Act, to many testators to leave it so in the case of a Roman Catholic dignitary.

I have no doubt that since the passing of the Ecclesiastical Titles Act, a great deal of astuteness and care has been employed by lawyers to avoid those difficulties, and I do not think that our Board would feel itself competent to carry out a bequest to "John Archbishop of Tuam;" but I am only speaking speculatively, because the case has never arisen before the Board: but if 100 *l.* was left to "John Archbishop of Tuam," I apprehend that the Board would be slow to aid that individual.

71. *Lord Archbishop of York.*] Without knowing it sufficiently, I suppose you are cognizant of the fact that sums of money are left in trust to Roman Catholic Bishops constantly in this country?

Constantly.

72. And that has gone on before the passing of the Ecclesiastical Titles Act, and since?

Yes;

Yes; but I apprehend that the language used by testators in leaving bequests has been much more guarded since the passing of the Act.

73. *Chairman.*] How, in your judgment, is a Roman Catholic to act, or how is he to express himself, if he desires to leave for pious purposes, in trust or otherwise, a certain sum to the Bishop of his diocese, say to the Roman Catholic Archbishop of Tuam for the time being, having a general confidence that the Archbishop, or his successors, will be equally worthy to administer the trust; in what words is he to specify the person holding that dignity, the expression of that dignity being prohibited under the Ecclesiastical Titles Act?

I apprehend in some circuitous way such as this: "To the person who for the time being shall exercise spiritual or ecclesiastical jurisdiction in Tuam," or any other locality.

74. And that would not go against the provisions of the law?

I am not aware that the case has ever been tried, but I know that circuity is constantly resorted to, to avoid bringing it within the law.

75. Earl of *Harrowby.*] But in regard to ecclesiastical jurisdiction, how would you distinguish between Roman Catholics and Protestants?

"The person who is the Roman Catholic Bishop, and should for the time being be exercising spiritual jurisdiction;" I should have added those words; but no doubt that the result has been that circuity of that kind has been resorted to in carrying out the intentions of testators.

76. But the lawyers habitually make use of that phrase, and find no difficulty?

The case has not been tried; I am not aware that the next of kin have come in and claimed a bequest as against the parties, and I do not know what the decision of the court of equity would be if they did; it is not competent for me to say that.

77. *Chairman.*] Is there any other case which you desire to bring before the Committee?

None that occurs to me at present with which I need trouble your Lordships.

78. Is there any other remark which you wish to make as to the operation of the Ecclesiastical Titles Act in Ireland, or as to the clause in the Roman Catholic Relief Bill?

None, except my own opinion, whatever it be worth, that I think it has acted harshly upon the Roman Catholic prelates of Ireland; and that as in the instance I gave your Lordships, it has had a tendency to bring Roman Catholic officials, like myself, into unnecessary collision with the Bishops of their own communion.

79. Of that, however, you have only given us a single instance?

But those might have been multiplied. That instance to myself was a painful one, because I felt that there was collision between my conscientious recognition of the Bishop of my church and my duty to the Government, whose officer I was.

80. Are you able to give the Committee any opinion as to the effect which that Act has produced on the feelings of Roman Catholics of authority and position in Ireland?

It has caused considerable estrangement between the Roman Catholic Bishops and the governing powers, whether they may have been Whig, or Conservative. No doubt it has operated largely to estrange the Roman Catholic hierarchy, and I may say that, from the time of the passing of that Act up to the time of the recognition of Cardinal Cullen, as Cardinal, the Roman Catholic Bishops have severed themselves from attending the Lord Lieutenant's levees, because they felt that they could not, and would not, be recognised in their proper capacities.

81. Earl of *Harrowby.*] Are you aware that during the Maynooth inquiry no Roman Catholic would communicate with them in consequence?

I am not officially aware of it; I have heard it stated so, but I can say that the general state of the law in Ireland has been one to exasperate and wound the feelings of Roman Catholics.

82. You are aware that the feeling is greater in Ireland than in England, inasmuch

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inasmuch as it was retrogressive there, the titles having been all previously recognised?

Yes; for instance, I believe that by the Church Temporalities Act, the Archbishop of Tuam, who had been previously Archbishop, is now only Bishop of Tuam; and therefore, I believe Archbishop M'Hale's assumption of the title would not have been a contravention of the Catholic Relief Bill, but it became a contravention of the Ecclesiastical Titles Bill.

83. *Chairman.*] The same remark applies in exactly the same manner to the diocese of Cashel, there having been an Archbishop previously?

Precisely so.

84. Duke of *Somerset.*] As I understand you, you think it a grievance that a Roman Catholic Archbishop should not sign himself, for instance, "Archbishop of Tuam"?

It depends upon what a grievance is.

85. But is that what you, as a Catholic, understand as a grievance?

I do.

86. But as a Catholic and as a lawyer, can there be two Bishops of the same diocese?

I apprehend that there could be a designation found for each.

87. I understood you to say, that the Bishop of Tuam desired to be recognised as the Bishop of Tuam?

Manifestly a bequest to the Bishop of Tuam would pass to the Protestant Bishop of Tuam.

88. But do you think that the Catholic Bishop of Tuam should be recognised by the State as Bishop of Tuam?

It would be very hard, perhaps, to hold that precisely the same designation should be applicable to two persons, because it might bring them into frequent collision; but I can quite imagine a designation that would meet all the necessities of the case, and still recognise the spiritual jurisdiction of the Roman Catholic Bishops by the names of their respective dioceses.

89. If it has been stated before the Committee of the House of Commons that the Catholic Bishops object to being called Roman Catholic Bishops of a place, could you suggest how that difficulty is to be met?

Perhaps if you left out the word "Roman," they would have less objection to it.

90. Then they would be called the "Catholic Bishops"?

They frequently are so called.

91. *Lord Archbishop of York.*] Would you not, by that mode of designation, give rise to another grievance, as other Bishops claim the title of "Catholic"?

I have no hesitation in telling your Lordships, from my experience of the operation of the Ecclesiastical Titles Act, that it has grated against the feelings of the Roman Catholics, and that it has produced a large amount of estrangement between them and the authorities of the State.

92. *Lord Privy Seal.*] Has that grated upon their feelings more than the law which was passed at the time of the emancipation?

Of course that wounded their feelings very much at the time; but, as I stated just now, the Archbishop of Tuam could have, under that Act, continued to call himself Archbishop of Tuam, because it did not come into collision with a title of the Established Church; but the moment the Ecclesiastical Titles Act passed, even though it did not come into collision with the recognised title by law, he instantly brought himself within the operation of that statute.

93. *Lord Bishop of London.*] That is more an accident in the case of Tuam, but it would not hold, either with regard to Dublin, or Armagh?

No.

94. How should you propose, then, that those people should be designated, in order to avoid difficulty in the Charity Commission, because, if money were left to the Archbishop of Dublin, it would go to Dr. Trench, would it not?

It would, certainly.

95. How

95. How could you propose to remedy that in the case of Armagh?
I have not given sufficient consideration to that, to be able to give any opinion, but I should say "to the Catholic Archbishop of Armagh"?

96. But why should you not say "to the Roman Catholic Archbishop of Armagh"?
I do not know. There is some feeling that the word "Roman Catholic" is a term of reproach.

97. Supposing it was "to the Catholic;" that might raise the question as to who was the Catholic; you are aware that the name "Catholic" is claimed by ourselves?
I am aware that it is claimed.

98. However, if you say that there is a grievance, are you not bound to find some mode of getting out of the difficulty, and if no mode can be found the grievance must remain.
I have not applied my mind to consider that difficulty, or the solution of it sufficiently. I did not think that I should be questioned by your Lordships upon that point; but I certainly do say that the law, which at present exists as a law, has been received universally in Ireland as one which is needlessly hurtful and offensive.

99. Earl *Granville.*] With respect to those designations, would not the repeal of that clause in the Emancipation Act, and of the whole of the Ecclesiastical Titles Act, leave Ireland exactly in the position in which it had been for a great many years, without any practical inconvenience or complaint?
I do not see any practical inconvenience whatever in sending them back to the *status quo ante.* I am quite clear upon the point, that the return to the state of things before the passing of the prohibitory clause of the Relief Act, and of the Ecclesiastical Titles Act, would subject us to no practical inconvenience in Ireland.

100. *Lord Bishop of London.*] Do you think that, before the passing of this Relief Act, and this clause, bequests were made to persons under the name of "the Archbishop of Dublin"; for example, meaning the Roman Catholic Archbishop of Dublin?
I have heard of a case in which the late Dr. Whately claimed a bequest when it was left in that way; but I believe that, upon his being convinced, by Archbishop Murray, that the testator was himself a Roman Catholic, and clearly intended the bequest to be for Roman Catholic purposes, though he vindicated himself and his legal right to receive it, he handed it over. I am not officially acquainted with that case, but I believe that such a case occurred.

101. I understand you to say that, before the passing of the Relief Act, cases of this kind might occur which might give rise to great difficulties?
I do not think that the difficulties were felt at the time; I was very young at the time of the passing of the Catholic Emancipation Act, and of course I am not able to speak upon the subject, but I apprehend that those difficulties were not felt practically.

102. *Chairman.*] But this case to which you have referred about Archbishop Whately and Archbishop Murray must have been subsequent to the passing of the Roman Catholic Relief Act, because Archbishop Whately was not a prelate of the church until after the passing of that Act?
It must have been so; I have no official or personal knowledge of the case, except that I have heard that such a case did occur.

103. Lord *Lyveden.*] A noble Lord has asked you how you would get rid of the difficulty of two Bishops having the same title. I suppose your only way of getting rid of that difficulty would be to get rid of the Act?
I would get rid of the Ecclesiastical Titles Act, and also of the 24th section of the Catholic Emancipation Act.

104. And you do not think yourself called upon to suggest any other mode of solution?
I did not think that I should have been called upon by your Lordships to suggest any solution.

105. *Lord Bishop of London.*] But you seem to be of opinion that the difficulty

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difficulty would exist, even if those two clauses were repealed. If two men claim the same office, and the bequest is left to the office by name, how is the difficulty to be got over, unless you separate their designations?

I presume that, before the passing of the Roman Catholic Relief Act, those were every day occurrences, and must have been got over in some way or other. I am not aware of any practical difficulties having been experienced.

106. Are you aware that bequests were left to Roman Catholic Bishops, under the titles of Bishops of Dioceses, before the passing of the Roman Catholic Relief Act?

I am not aware; but supposing the Ecclesiastical Titles Act were repealed, and the prohibitory clause of the Roman Catholic Relief Act were also repealed, I think it would be very much a question of construction for a court of equity whom it was intended to designate; and I think it would practically come round to whether the testator was a Roman Catholic or a Protestant, if either Bishop claimed it.

107. *Chairman.*] It has been stated in the evidence before the Committee of the House of Commons, which has now been communicated by the House of Commons to the House of Lords, that since the passing of the Ecclesiastical Titles Act, Roman Catholic Bishops have systematically withdrawn from any board of education, or from any intercourse upon the subject of combined education with members of the Established Church; do you know anything, of your own knowledge, upon that point?

Not of my own knowledge; but I think the circumstance of Cardinal Cullen having himself gone to a Lord Mayor's banquet to meet the Lord Lieutenant, and, within the last few days, to the Castle of Dublin to meet the Prince of Wales, when he was placed above the difficulty of the Ecclesiastical Titles Act by becoming Cardinal, is a proof in itself that his not having previously gone arose from the fact that he felt the difficulty of his *status*.

108. Lord *Colchester.*] What, in your opinion, would be feeling of the Roman Catholic population, supposing that the Roman Catholic Bishop of Kerry were designated, for instance, "The Right Rev. Bishop Moriarty, commonly called Bishop of Kerry," as is done in the case of courtesy titles in England?

I think that it would be one way of solving the difficulty; but I am not able to speak, of course, for the Catholic Bishops or for the Catholics of Ireland.

109. You stated, did you not, that some designations would be regarded as offensive, and that the Roman Catholic Bishops would object, for instance, to be designated, or to designate themselves, as "Roman Catholic" Bishops?

I am not able to say whether that solution of the difficulty would meet the views of the people.

110. I see that it was stated before the Committee of the House of Commons, that it was usual to style a Bishop of the Roman Catholic Church as "a Bishop exercising spiritual jurisdiction" in a certain locality; did that ever lead to any difficulty and ambiguity, so far as you are aware, in distinguishing between the Bishops of the Established Church and the Bishops of the Roman Catholic Church?

I never heard of any practical difficulty arising from that.

[The Witness is directed to withdraw.

The Right Honourable Sir WILLIAM PAGE WOOD, Lord Justice of Appeal in Chancery, is Examined, as follows:

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111. *Chairman.*] YOU were, I believe, a Member of the House of Commons at the time of the passing of the Ecclesiastical Titles Act?

I was.

112. Since that time also, and more especially in your judicial capacity, have you had opportunities of observing its operations?

I have had no case whatever in which the operation of the Act has been brought before me judicially.

113. Have

113. Have you had occasion to consider its working ?

I have had nothing to do with its working. The subject would not be very likely to come before me. The only possible way in which it would come before me would be in the case of a gift or bequest to a person assuming one of those titles, and no such case has occurred to me.

114. Do you consider that the position of the question has changed since the passing of the Act ?

It has not struck me that it has materially changed since the passing of the Act. I might mention that, when the Bill was first introduced, I did not fill any official capacity in the House of Commons; but during its progress I became Solicitor General, and therefore I was not responsible for the actual framing of the Act, though I undoubtedly supported it before I was, or had any probability of becoming connected with the Government.

115. Has the operation of the Act been anything like what you expected it would be ?

So far as I have been concerned, it has been completely what I expected. If I had had anything to do with the framing of the Act, I should have been perfectly content with simply the first clause, which says that any bull or authority of the Pope with regard to the constitution of Sees, or any assumption of titles, is illegal and void. I should rather have preferred, if I had any voice in the matter, the omission of the penal clauses altogether, considering, as I did at that time, and as I do so at this time, that the Act was meant as negativing a distinctly and clearly assumed authority on the part of a foreign potentate.

116. Then, since the Act has been passed, there has been no attempt made to enforce the penal clauses ?

I think not. I never thought that they would be enforced. I considered the Act more as a protest than as being likely to fulfil any other function.

117. Does it seem to you objectionable that there should be on the Statute Book penalties against an imputed offence, which penalties it is never attempted to enforce ?

As regards the penalties, I thought then, and I think now, that it would have been wiser if no such penalties had been included in the Act, and if it had been simply declared that the constitution by a foreign power of any authority having jurisdiction in this country was null and void.

118. But I gather your opinion to be that the act of legislation should be confined to a protest against the assumption of these titles, but that it should not impose penalties on their assumption ?

If it were necessary, of course the simple act of declaring the assumption of such titles to be illegal would enable a proceeding to be taken against persons contravening the Act of Parliament for misdemeanour. The contravention of the precise enactment of an Act of Parliament is in itself a misdemeanour, and it would have been quite sufficient, I think, to have left it there. It was not probable that the judges would have been called upon to apply the Act, but the declaration was desirable in two points of view; in the first place, as giving notice to a foreign potentate that the course he had taken was irregular; and, no doubt, if there were any diplomatic relations between the two courts, he would never have taken such course; and on the other hand it would have prevented the Roman Catholic subjects of this realm from being placed in a very false position, by its being supposed that a jurisdiction was conferred to which they would be bound, when, in truth, no such jurisdiction could possibly be conferred.

119. You think that that would have been wiser than imposing a specific penalty of 100*l.* for each offence ?

I think it would have been very much wiser; and I believe that the penalty of 100*l.* would never have found its way into the Act (it was there when I had to take it up as Solicitor General) except for the previous clause in the Roman Catholic Emancipation Act of 1829, where the same penalty is enacted.

120. *Lord Chancellor.*] Let me remind you of the precise wording of the first clause, with which I understand you to say that you would have been well satisfied to have stopped. It runs thus: "All such briefs, rescripts, or letters apostolical, and all and every the jurisdiction, authority, pre-eminence, or title

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conferred or pretended to be conferred thereby, are and shall be and be deemed unlawful and void." An objection has been taken to that section on behalf of some dignitaries of the Roman Catholic Church, as I understand their evidence, of this kind: they say that it does very much more than strike at the assumption of a title or the carving out of a diocese, and that it makes the brief, rescript, or letters apostolical, or affects to make it, and the jurisdiction given by it, unlawful and void. They say, as I understand them: "We have a brief or a rescript which contains a great number of things, dealing with various matters of discipline and regulation of the Church, and, among other things, conferring the title of Bishop, and mentioning a particular diocese. We do not agree with you, that even as regards the title of Bishop of a diocese you have any right to legislate about it; but, passing that by, you affect to make the whole brief rescript, and everything in it, void." I understand that to be one objection that has been made?

The material word there is the word "jurisdiction."

121. I have no doubt that was the idea that was in their minds?

The preamble says that certain persons have assumed to themselves titles under authority given them "by certain briefs, rescripts, or letters apostolical from the See of Rome, and particularly by a certain brief," which is mentioned. Then the first clause says, "All such briefs, rescripts, or letters apostolical, and all and every the jurisdiction and authority, pre-eminence or title conferred or pretended to be conferred thereby, are and shall be and be deemed unlawful and void." If there were any such difficulties as suggested, it appears to me that it would be very easy to remedy them on the part of those who issued the brief or rescript, by taking care that the part which they wished to be valid should not be mixed up with what was invalid.

122. But I understand that to be one of the objections made; that you have no right to go beyond the particular thing which you want to deal with, and that you have no right to throw any slur or cloud on the rest of the document?

That does not strike me as being a very valid objection. The Act is simply dealing with those bulls and rescripts as professing to confer authority. If anything else has slipped into that bull or rescript inadvertently (and I suppose that it can only be inadvertently that it can have been done), then of course the only remedy would be to have a new bull or rescript without the objectionable matter.

123. Have you ever considered whether the question could be dealt with by taking the particular thing which has caused so much offence in this country; namely, the assumption of the title, as a title of honour and dignity, by any church other than the Established Church, and the apparent creation of a diocese, or the adoption of a diocese already created, and declaring that such assumptions are invalid, and perhaps unlawful; and by resting the protest upon that, not by way of enactment, but by way of a declaration of the law of the country; not saying anything at all touching the document in which the thing is done, but treating it as a thing which may be done either by a document or without a document?

Of the two, I confess I should have very much preferred this enactment in the first clause, which would have declared these letters apostolical, and the jurisdiction thereby conferred, to be invalid. I should not myself so much care about the second clause, which proceeds to the taking of titles and makes that penal; but it does appear to me to be of very great importance to retain a decided declaration, that any jurisdiction pretended to be conferred by any foreign potentate, and by any instrument executed by him, is invalid. The principal end of that Act would not have been obtained if it had simply declared that the taking of titles would not be valid. With the permission of the Committee, I will illustrate that by one single proposition. I took pains, of course, to refresh my memory before coming here, and I looked at the debates on the subject which took place at the time. I may instance as an illustration, the jurisdiction which we are allowed to exercise by the Sultan in Turkey over our own subjects. He would have great reason to complain of any instrument being issued by us, saying that we give our consul at Smyrna jurisdiction over the town of Smyrna, whereas that objection would not apply if we only gave jurisdiction over the English inhabitants of Smyrna; but since then a much

a much more important and apposite illustration has occurred to my mind, of the Privy Council having now determined that the attempt to confer jurisdiction by letters patent upon a Bishop in a colony where there exists already a Government established by the consent of Her Majesty, is null and void. It appears to me that no Government would advise Her Majesty to grant other letters patent in exactly the same form, and again conferring jurisdiction, after that jurisdiction had been declared to be void; and that is just the position which this country seems to me to be placed in as regards those titles, only upon higher grounds; *i.e.*, a foreign authority attempting to confer jurisdiction within its boundaries.

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124. That is, assuming that those briefs or rescripts, when looked at, would appear to confer coercive jurisdiction?

They purport to confer jurisdiction of some sort, whatever it be; and that is very embarrassing to those who conceive themselves bound to submit to that jurisdiction, when in reality no such jurisdiction does or can exist in this country, and it is quite impossible that it should exist.

125. *Lord Archbishop of York.*] As a matter of fact, the jurisdiction is exercised, and the Romish Canon Law, with or without this Ecclesiastical Titles Act, is operative in this country, and is constantly in operation, is it not?

It would not now be recognised. The difference, I apprehend, would be this: that if you were simply to sweep away this declaration, a question might be raised and argued, perhaps with considerable chance of success, before our civil tribunals, as to whether or not with a bull professing to confer jurisdiction, the Roman Catholics, who submit to the authority of the Pope, would be held by our tribunals as bound by that to which their consent, either expressed or implied, would be given, in the same way as we allow authority to the decision of the Wesleyan Conference, and of the governing authorities of various other religious bodies of that kind. The judges could not now look upon the Pope as having power to impose authority, even upon the religionists who might be supposed to be willing to submit to his jurisdiction.

126. Let me put this case: a Roman Catholic priest is suspended by his Bishop; he considers that his suspension is not in accordance with the Canon Law; he has an appeal to the Pope in that case; but supposing his civil rights were affected, would not a court of law in this country entertain his case?

I think it would be open to great difficulty, even with regard to the old statutes of provisors of the 25 Edw. 3, the 13 & 16 Rich. 2, and an Act in the early part of the reign of Hen. 4, which do expressly prohibit the interference of the Pope, to say nothing of the last statute of Hen. 8, which expressly forbids appeals to the Pope.

127. Supposing, for the sake of argument, that this was a case where a priest was deprived by his Bishop (you are aware, of course, that the Bishops of the Romish Church have much greater power than our own Bishops), and he preferred not to appeal to the Pope, but applied to a Court in this country to redress a supposed unfairness: would not the Court entertain that application as it would entertain a question amongst the Wesleyans, which arose from consensual jurisdiction?

It would, no doubt, apply all those principles until it found itself stopped by some Act of Parliament; but I think it would be a very great question whether some of the earlier Acts of Parliament would not stop the action of the Court.

128. If the other Acts are not effectual to stop the jurisdiction, this Act stops it, does it not?

This Act says at once that everything done or attempted to be done under this jurisdiction is void; so that if the Roman Catholic priest who was claiming his position was alleged by his adversary to have been displaced by the act of the Bishop of the diocese, this Act of Parliament would at once interfere, and say, "That Bishop has no jurisdiction over you."

129. But then that puts the Roman Catholic body in so very bad a position that I question whether it could be maintained in all its fullness?

The Roman Catholic body, when they existed in the fullest state of submission to the Pope, as Englishmen, thought it was desirable to be placed in that

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position by the statutes to which I have adverted. The people of this country have always been extremely anxious, even when acknowledging most distinctly the spiritual jurisdiction of the Pope, to prevent his tyranny by way of jurisdiction over them as regarded any matter concerning the temporalities.

130. *Lord Chancellor.*] But supposing there were some trust created of property in this country, which was either to be administered or enjoyed by some person who was described as a priest of the Roman Catholic faith, performing his functions at some particular place; and supposing the trust to be a chapel there, with some land and a residence attached to it, and that in the administration of the discipline of the Roman Catholic Church that priest was displaced, and prevented from performing any of his functions, and ousted from that post altogether, and he appealed to one of the courts of common law, or to a court of equity, to be maintained in the enjoyment of that property, would not the court of equity have cast upon it the duty of determining what was the Government, *de facto*, of the Roman Catholic Church, and whether, in accordance with the principles of that Government, he had been rightly or wrongly displaced; and if it found that the Government of that Church was, *de facto*, such that the Bishops and Archbishops of the diocese, either of their own authority or acting under orders from Rome, had displaced the person in question, according to what was the established custom of their Church, would not the court of equity be obliged to recognise it?

I should think the Court would at first consider the matter independently of any existing statute, and that it would then adopt the rule which your Lordship has mentioned, which is a well known rule amongst us, of entirely abiding by the regulation of the religious bodies who apply to us for assistance. Having done that, the next question would be, whether there was any Act of Parliament prohibiting this particular religious body from introducing a special authority of a particular character, and if the Court found such an Act, as, for instance, an Act of Parliament saying that he who is alleged to be the Bishop of the diocese cannot be the Bishop of the diocese, then it would say, "You cannot exercise that authority."

131. Supposing that in a proceeding, such as I have endeavoured to indicate, nothing necessarily might transpire as to the title of a Bishop of a particular diocese; supposing that it happened that A. B., *de facto*, was the Bishop to whom, according to the orders of the Church, that priest was subject, would the Court go into the question of whether he called himself Bishop of one diocese or another?

Not simply if it was a mere question of names; but I assume it, of course, to be a hostile case, and a case, therefore, in which everything that it may suit either party's purpose to bring forward will be brought forward; and, therefore, that the person who is desirous of invoking those statutes will inform the Court that he is only displaced by an alleged Bishop of the diocese. He would, perhaps, produce the bull creating the Bishop of the diocese, and he would say, "That is the thing that displaced me;" whereupon the Court would say, "If that be the case, you are not displaced, because that authority is null, and we cannot look upon it as valid."

132. Do you consider that this Act was intended to interrupt and prevent the exercise of jurisdiction by a Bishop of the Roman Catholic Church over a clergyman of the Roman Catholic Church, that is to say, such jurisdiction as that Church contemplates and admits of?

I think it was intended to prevent their exercising it in that way. A great deal of the discussion in the debates upon the Act arose upon this; it was over and over again said, "Why do you not content yourselves with the authority you have hitherto had as Vicars Apostolic, but presiding over the see of Heliopotamus and other foreign sees?" (I think that was the see chosen before the late Cardinal Wiseman was made Archbishop of Westminster), and the question was constantly asked, "Do you wish to prevent our exercising authority over our own people?" The answer of those who supported the Bill was, "Not in the least; but do not claim that authority in the shape of jurisdiction over a territory, claiming it by virtue of your power within that territory, not claiming it merely as applied to Roman Catholics, but over every

every baptized Christian." I will remind your Lordship of it in this way; it was said, "But is the difference after all only this" (I think Mr. Roebuck raised the question) "whether there is a Bishop in Yorkshire, or a Bishop of Yorkshire?" The answer was distinctly that that was the difference. I might say, for instance, that the Emperor Napoleon would be an Emperor in England while on a visit to Her Majesty, but he would not be Emperor of England. The letters patent I remember were very carefully drawn in the case of the Bishop of Jerusalem, as contrasted with these establishing the Colonial Bishops (I may say that I had nothing to do with the drawing of them). We popularly call him Bishop of Jerusalem, but these letters patent call him very properly a Bishop in Jerusalem. In the patent drawn for the Bishop of Gibraltar, on the other hand, he was very properly called the Bishop of Gibraltar, Gibraltar being part of the dominions of the British Crown. It was considered, of course, desirable to leave to the Roman Catholics the management of their own affairs, and for that reason the object of the statute was to say, "Do not manage them under an assumed territorial jurisdiction which this bull has conferred." I was myself, when I became Solicitor General, in frequent communication with Roman Catholic gentlemen who took an interest in the matter, and with whom I was desirous, if I could, of agreeing, and I said, "Now, how far can we agree? Would it do if you were called the Bishop of the Roman Catholics in the diocese;" say "of Westminster?" (I went as far as that) but no, that would not do. At last they said, "This will do: 'Roman Catholic Bishop of Westminster.'" But they insisted most strenuously upon having the territorial designation kept to them.

133. *Lord Archbishop of York.*] Are you aware of the form of a Papal bull or rescript which makes a Bishop in the colonies?

I am not. I believe there is not a Roman Catholic country in all Europe which allows any bull to issue without the *placet* or *exequatur* of the Sovereign.

134. Duke of *Somerset.*] It has been stated that the grievance that Catholics feel is being kept in a state of apprehension that the law may at any moment be made operative. For instance, it is said that if the magistrates appointed a Roman Catholic chaplain to a prison, any magistrate who objected to the appointment might say that he wanted to be assured that the gentleman appointed was really a Roman Catholic chaplain and had authority, and that he would call upon him to produce the papers showing his authority to act as Roman Catholic chaplain; and if the chaplain produced the papers, those papers would themselves necessarily be signed by the Bishop, and would convict the Bishop of having violated the law, and that that therefore is a practical grievance. What is your opinion upon that?

In the first place I do not know whether the Bishops themselves do violate the law in that respect, but my own impression has been very strongly that the law has been very little violated. The law is, that the Bishop shall not assume this title, and every document that I have seen emanating from one of those Bishops, invariably does not assume the title, though when he publishes a book, for instance, the bookseller puts the title. Archbishop Manning, for instance, constantly signs "Henry Manning." I have seen several of his letters in newspapers and elsewhere, signed "Henry Manning, Archbishop."

135. I see it was stated by Mr. Hope Scott in evidence before the Committee of the House of Commons, that if such a chaplain produced the paper, it would begin in this way: "*Thomas, Dei et Apostolicæ Sedis Gratiâ Episcopus Southwarcensis*" (or of any place that he was Bishop of); and that the production of that paper would necessarily involve the Bishop in a violation of the law?

I do not think that it would so involve him; of course it is a nice point upon enquiry as to how far you could prove the publication to be by authority of the Bishop.

136. It would be under his hand, if he subscribed his name. It would be evidence against the Bishop that he had assumed a title, and it would be evidence of the exercise of a jurisdiction, which by the Act is declared to be illegal and void?

Yes; but then what would be the grievance if he were ordained by this Bishop, simply *quâ* Bishop, by the authority committed to him as Bishop.

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Any Bishop may ordain anywhere. As far as conferring spiritual power is concerned, an ordination by a Bishop is sufficient. A Bishop may be wrong in ordaining out of his own diocese, without letters dimissory, but still the ordination is good.

137. Without his stating of what place he was Bishop?
Yes.

138. *Lord Chancellor.*] No doubt the ordination would be good, because the *jus ordinis* may exist; but they say that according to the law of their church, the Bishop never does exercise his functions, except with reference to a particular limit of district, and it is shown upon the face of everything he does, that he is exercising his powers within that district?

I think that the real answer to that question is, that if the Pope and the Bishops do insist upon having jurisdiction within a territory and district, and if that be thought just, of course they have a grievance; but there would be no difficulty in the Pope making every one of them Vicars Apostolic as well as Bishops. Gregory the Sixteenth had constituted Vicars Apostolic, and had constituted them as persons to minister among the Roman Catholics of England; whereas Pius the Ninth in his bull said he governed England, and appointed those persons to govern England. That is the thing which was thought objectionable. But there is no real grievance as to their carrying on their functions. I for one do most warmly protest against being supposed to wish to interfere with my fellow Christians. I should not much mind whether they were the established religion of Ireland or not; and I do protest against being supposed to wish in any way to affect their exercising their religious principles in any way they think fit. The only question in my mind is the political question, which justified, in my opinion, the Act in question.

139. *Lord Archbishop of York.*] In other countries which are Roman Catholic they carry that principle of the division of districts so far, that no Bishop will ordain a person born in another diocese without the sanction of the Bishop of the diocese in which the person was born and baptized; that being so, it would be a hindrance to their system if in one country in Europe they were obliged to frame their law differently, and to strike out all which related to that particular rule or custom?

Yes, they would wish to have it so, no doubt. It is of no use to mince the matter; they insist on being Bishops of dioceses, with territorial jurisdiction; and if it is right that they should have it, I agree that they have a grievance, but I do not think it right now, any more than it was thought right in the time of Richard the Second.

140. Duke of *Somerset.*] You think, as I understand, that they might have gone on after the year 1850, as they did before that period, for 230 years, as Vicars Apostolic?

Yes. I do not see why in the year 1851 this grievance should have become particularly prominent.

141. *Lord Chancellor.*] But those Vicars Apostolic had some particular limits to their jurisdiction, had they not?
Quite so.

142. Then, as regards the political aspect of the matter, was there any difference in the offence, whether it was done in the shape of giving a certain jurisdiction to Vicars Apostolic or to Bishops?

In the bull of Gregory XVI., it was "over all the Roman Catholics."

143. But the later Popes changed it, did they not?

They changed it when this bull came out, giving territorial jurisdiction; then Cardinal Wiseman said that he governed Essex, Hertford, and Kent; and the Pope said that he governed the realm; but up to that time there had only been Vicars Apostolic limited to jurisdiction over all Roman Catholics within such places.

144. *Chairman.*] It was a change of title more than a change of jurisdiction, as I apprehend?

It was important in this way, that it only affected jurisdiction over Roman Catholics. It was all very reasonable that the Pope should have his ordinary spiritual

spiritual authority over them, but it did not affect to confer jurisdiction over any territory.

145. But Roman Catholic Bishops can have no jurisdiction, except over those who, by community of religion, acknowledge their jurisdiction; and, if that be so, I apprehend that it is only a difference of title, and not of jurisdiction, between the Vicar Apostolic of former times and the present Bishop, who is named by the Pope, in England?

Supposing, without saying anything on the subject we are now discussing, that you established the Church of Rome in Ireland; then I apprehend that you would find that all those territorial jurisdictions would have a very different effect indeed from anything like a simple government of all the Roman Catholics in the district; you would find then that the Pope would be claiming, and perhaps not unreasonably, authority over all baptised persons, as in other countries.

146. *Lord Bishop of London.*] Do you consider that the word "jurisdiction," as used in those bulls, means coercive jurisdiction?

As far as the Pope can give it.

147. And that during the times of the Vicars Apostolic it was not a coercive jurisdiction, but only jurisdiction over the Roman Catholics who were willing to accept it?

Only over the Roman Catholics who were willing to accept it.

148. *Lord Chancellor.*] But if the instrument creating Vicars Apostolic gave jurisdiction over the Roman Catholics, did not that mean, as far as they could, to give coercive jurisdiction over Roman Catholics?

I suppose, on an appeal to the Pope, he would have ordered such and such things to be done.

149. Then that was almost as contrary to our constitution, and to what is legal and proper, as if the Pope were to give a Bishop jurisdiction over every one?

I think it would be simply this: "I, the person whom you recognise as the chief authority in your spiritual matters, send a person who is to preside over your section of that particular body of which I am the head." It appears to me that that is an exceedingly different position from saying, "I send you to exercise authority over the whole of that district, with every possible reserved claim" (and we know pretty well what the reserved claims of the Church of Rome are in these matters) "which will follow from your being placed in that position, with a jurisdiction over a district rather than over persons." I will mention one instance in this point of view. I believe that the Romish Church recognises the doctrine of what is commonly called "mission." A Bishop requires not merely consecration to the spiritual position in which he is placed there, but to be over a district he ought to have also "mission," which means the concurring authority of the State. There is no full and direct mission in a diocese without there being a lawful position for the Bishop in that diocese. A Bishop having mission, or several Bishops having mission, may meet in synod, and may pass their acts in that synod in proper form. It might be a very serious question, even among themselves, whether, if a number of Bishops met without mission, they would have the power to constitute a legal synod.

150. Duke of *Somerset.*] I have before me the brief of the Pope, and I find that the Letters Apostolic issued by Gregory the Fifteenth, on the 23rd day of March 1623, say, "He had taken the opportunity of appointing William Bishop, consecrated to the See of Chalcedon, a Bishop with ample faculties and with the power of a Bishop in ordinary to the government of the English Catholics in England and Scotland?"

That is the old form.

151. That form is apparently unobjectionable?

Nobody ever objected to it, and I do not think anybody ever would object to it.

152. While they have adopted another form in England, in Scotland they have left the Scotch Catholics under Vicars Apostolic, as I understand?

I believe they have up to this time.

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153. Therefore, that which was said to be so necessary for the good government of the Catholics of England was found not to be necessary for the good government of the Catholics in Scotland, where the feeling would have been much stronger against this proceeding?

I cannot fathom their reasons, but very possibly it may have been so.

154. Earl of *Harrowby.*] Would the position, in regard to any question among the Roman Catholics themselves, be different before an English court of law, according as the authority might be episcopal, or emanating from a Vicar Apostolic?

I do not apprehend that it would be so at all without those statutes. Of course, if there was nothing to declare the mode in which the Bishops were constituted to be a void proceeding, then my opinion is that we should only have to inquire whom, by a *quasi* contract they had recognised, and by whose decisions they had agreed to be bound, just as you would be bound by the decision of an arbitrator.

155. That would be the same with regard either to Vicars Apostolic or to Bishops, would it not?

It would be the same with regard to Vicars Apostolic or to Bishops.

156. So that the position of Roman Catholics would not be altered in a court of law, whether they were under Vicars Apostolic or under Bishops?

Not in the least.

157. Is there any difference in this respect, that where there is a Vicar Apostolic there is more immediate dependency on the Court of Rome, and that where an episcopate is established there are rights as against the Bishop?

I am not sufficiently acquainted with their constitution to be able to answer the question. That point was discussed a great deal in the House of Commons, and I have read all the debates upon it; but I do not myself know enough about it to speak with any authority upon the point.

158. It was said at the time that this bull was to give a greater protection to the English Roman Catholics than they had enjoyed before, and that they could then appeal to the canons of their church, which, under the exceptional government of Vicars Apostolic they could not do?

I remember that being said; but they have gone on 200 years and more without it. I again say, that I should be very glad if all those penalty clauses could be swept away; they have an offensive aspect, which I think is unworthy of the occasion.

159. Earl *Granville.*] You stated that so far as your personal opinion went, you would have preferred the Bill being drawn simply with the first clause in it, and with nothing afterwards; does that apply to an alteration at the present time; do you think that this Bill being rightly or wrongly considered offensive by a very large number of British subjects, and it being stated by them, and admitted by us to be practically inoperative, it would be worth while to alter the Bill now if you did not intend to repeal it?

I think it might not be worth while to alter it; and if you repeal it, you certainly would exceedingly embarrass those Roman Catholics (of whom I believe there are not a few of the old school) who are not Ultramontanes, and who entertain at this moment the same views which their ancestors, in the time of Edward the Second and Henry the Fourth, entertained as to the introduction of the papal authority, because you would seem to give direct sanction to a jurisdiction under which they would not be particularly pleased to be put.

160. Are there many Catholics who acknowledge that opinion?

I should say that there are some, but there is a great difference among them. Everybody knows that the Ultramontanes are in a large majority throughout Europe.

161. As you have introduced the point of the feeling of the Roman Catholics, do you not think that it is likely that there would be much more opposition to Ultramontane views shown by Roman Catholics if it was not that certain things which the great majority of them think offensive to their religion bind them now

now into one mass, which would very likely be dissolved if you took away those grievances?

It may very possibly be so.

162. *Lord Archbishop of York.*] What would be the effect of the repeal of this Act upon the law of the case; would it then become lawful for any foreign power to give territorial titles and territorial jurisdiction in England?

You would still get into this sort of awkward difficulty: that any court before whom the question might come would have to consider not what the effect of the repeal of this Act would be, but what would be the effect of those old statutes which still stand, and therefore you would be driven back to those antiquated Acts of Parliament. I should suppose that anybody repealing this Act would think it right to repeal those old Acts also, and if those were repealed, I think you would impress, at least upon the Roman Catholic mind of this country, a notion that the Pope had a very much more extensive jurisdiction than he ever could have exercised when he had greater authority in this country.

163. *Chairman.*] As a matter of fact, have not those old statutes been included in the recent repeal of obsolete statutes?

Your Lordship refers to the several recent Acts for the repeal of obsolete statutes, viz., the repealing Acts of 1861, 1863, and 1867. They do not repeal the statutes I have referred to.

164. Lord *Lyveden.*] Before this Act was passed, was it acknowledged to be illegal to assume ecclesiastical titles in this country?

I apprehend not; your Lordships are aware that it was absolutely prohibited by the Roman Catholic Emancipation Act of 1829, but there was some sort of slip, if it be a slip, as to existing sees only being included.

165. But if this law was repealed, you would only return to the position in which you were before?

Yes.

166. Do you agree in this answer of Mr. Justice O'Hagan; he is asked this question in the House of Commons by an Honourable Member; "the fact is, that the law is a dead letter and a sham," and the answer is, "I should be sorry to say that any law was a sham, but this, certainly, is a dead letter"; do you agree with that answer, that it is a dead letter?

I do not agree with that answer, and for this reason: from all that I have seen, I believe that the Act has been very rigorously observed by the Roman Catholic prelate. I myself have never seen any instrument professing to be signed by a Roman Catholic prelate who assumed a title, and I have seen many professing to be signed by Roman Catholic prelates where they did not assume the title.

167. There has been no penalty ever sued for, has there?

No, but the Act is not a dead letter because of that.

168. And you think that the Act has deterred them from assuming such titles?

They would scarcely be "deterred," but I think they are anxious to obey the law.

169. *Lord Privy Seal.*] But they are very anxious that the Act should be repealed, are they not?

I hear so, but I am not in a position to say how that may be.

170. If they are anxious to have it repealed, what is it that makes them so anxious; is it that they would at once assume the titles which they are not now allowed to assume?

I think, very probably, they would; I quite understand their being very anxious that it should be repealed, from the communications which I had with them at the time. I had private communications with a legal adviser of Cardinal Wiseman at the time as to what would or would not satisfy them, and I found that they were determined to have, if they could, a territorial designation, and that nothing less would satisfy them than a *quasi* territorial description, and no other name, such as "Bishop in that diocese," or "Bishop of the Roman

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Catholics in that diocese," or " Bishop to preside over the Roman Catholics in that diocese " would do, but they wanted the Pope to be able to create territorial distinctions in this country.

171. And they put great value upon that?
I have not the least doubt that they do set great value upon it, and if you give it they will work it as a very important matter.

172. And therefore they do not think the Act a dead letter?
In that respect they do not think it a dead letter.

173. Duke of *Somerset.*] I find that Mr. Harting says, " We take it that there can be but one set of Bishops, and that in England, out of the Roman Catholic Church, there are no Bishops at all. If you ask us to limit ourselves, and to call ourselves by any particular designation, whether it be ' Roman Catholic ' or any other designation, it admits of a distinction between ourselves and the existence of another set of Bishops which we do not admit"?
They have gone a little farther than my friend did at the time. In the year 1850 he said distinctly that an arrangement could be come to if they were allowed to be called " Roman Catholic Bishops" of different places; he did not object to " Roman Catholic Bishops." I should think that that hardly would be the view of all parties, because they do not object to being called " Roman Catholics." If they say there can be only one set of Bishops, then, inasmuch as the Crown has conferred jurisdiction upon our Bishops, I still more strongly object to jurisdiction being claimed in their dioceses by so-called Bishops appointed by the Pope, and aknowledging his jurisdiction only.

174. I find the same evidence from Dr. Manning here stating that he should object to being called a " Roman Catholic Bishop"?
Then that is new.

175. That there is a new state of feeling since the time when this Act was passed?
I think I may very confidently say that it is. That is my impression very strongly from what persons would then have been satisfied with.

176. Earl of *Harrowby.*] Are you aware that Bishop Ullathorne before the same Committee said that he should have no objection to such a designation, but that he could not give an answer for all the rest?
I was not aware of that. They allow Greek Catholics to be talked of, and I supposed they would allow Roman Catholics to be talked of.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, at One o'clock.

Die Martis, 28° Aprilis, 1868.

LORDS PRESENT:

Lord Archbishop of York.	Earl Granville.
Lord Privy Seal.	Lord Bishop of London.
Duke of Somerset.	Lord Redesdale.
Earl of Stanhope.	Lord Colchester.
Earl of Carnarvon.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.

The EARL STANHOPE, in the Chair.

Sir TRAVERS TWISS, D.C.L., Queen's Advocate, is called in: and Examined, as follows:

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177. *Chairman.*] IN the year 1851 you were Commissary General of the Diocese of Canterbury, were you not?
I was.

178. You were the author of a book bearing the author's name, entitled "The Letters Apostolic of Pope Pius IX, considered with reference to the Law of England and the Law of Europe;" and the preface of that work bears the date of January 1851, does it not?
That is so.

179. I observe that the preface states that "The object of this treatise is to examine the late proceeding of Pope Pius IX, in its bearings upon the law of England and the law of Europe. The result of the inquiry seems to show conclusively that the brief in one of its provisions entails a direct violation of the statute law of the land with reference to the title of the see of St. David's, and that in its general object of erecting sees for bishops in ordinary, within the dominions of an independent sovereign without the consent of the Crown, it involves a departure from long established practice, which in such matters constitutes the law; and on either ground the brief is most objectionable;" may this be taken as stating in general the object and nature of the essay?
It does so.

180. In the extract which I have just read, you have adverted to the see of St. David's, which appears to constitute an exception to the general course pursued in the brief of Pope Pius IX; in all the other bishoprics, as I understand it, the object was to avoid naming any see which would clash with the existing sees in the Church of England; but in that single instance of St. David's that course was departed from; can you afford any explanation of that?
Perhaps I ought to explain, in justice to the author of the brief, that the title is properly "Bishop of St. David's and Newport."

181. Therefore, apparently, no exception was intended to be created from the general course of that brief?
I can form no opinion as to the intention, but the title is, "Bishop of St. David's and Newport;" so far there would be a slight difference, assuming that the bishop adopted both titles.

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182. Do you know which title has been since borne by the Bishop?
I cannot speak from knowledge; but my impression is that, if I have heard him spoken of, he has been spoken of as the Roman Catholic Bishop of Newport, but I am not certain as to that.

183. This work was published before the passing of the Ecclesiastical Titles Act, was it not?
It was published before the passing of that Act.

184. Was that Bill such, as in conformity with the principle of your publication you thought most desirable, or did you see at the time any defects in it?
It appeared to me that the Bill proceeded very much after the model of the clause in the Roman Catholic Emancipation Bill; and I presume that Her Majesty's Government at that time adopted that clause as a model.

185. It was probably on that model that the penalty of 100 *l.* was imposed?
Yes; and also I should think the forbidding any title to be assumed. The law, as your Lordships are aware, forbids individuals to assume the titles.

186. But it was also in conformity with the clause of the Roman Catholic Relief Act, that the penalty of 100 *l.* for each offence was inserted?
Yes, and the statute of the 10 Geo. 4, c. 7, had already forbidden the assumption of the title of any Archbishop or Bishop in England as well as in Ireland.

187. I think that I collected from your answer just now, that you consider that the Ecclesiastical Titles Act had proceeded too much upon a desire of preserving an analogy with a clause in the Roman Catholic Relief Act?
If I might venture to criticise the statute, not being myself conversant with the grounds on which it was passed, or the motives which influenced Her Majesty's Government at that time, I should say that it was rather vague, and had gone rather beyond perhaps what was necessary to vindicate the law.

188. *Lord Archbishop of York.*] Does that apply mainly to the second clause, the penal clause?
What occurred to me was that the expression "assuming the title," is rather vague. It does not precisely say in what manner it may not be assumed.

189. *Chairman.*] Would it be held to be an assumption of the title, to receive a letter which was addressed to one by that title?
The words are, "shall assume or use the title." I think that if the letter was claimed by reason of the designation, it might be held to be evidence of an assumption of the title.

190. Then, in point of fact, a Roman Catholic bishop might bring himself within the penalties of this Act, by merely opening a letter addressed to him by some other Roman Catholic, under a title which the Roman Catholics acknowledge as valid?
I hardly put it so strong as opening a letter; unless he had authorised the address. I rather meant, if he claimed it in any way as legally belonging to him by reason of the designation.

191. It seems then that the term "assume" is so large, that a bishop might find himself involved in penalties without having expressly, or in direct terms, claimed to himself that particular title?
It would be a voluntary act upon his part to claim the letter; and if he was to maintain a claim on the ground of the designation as being properly his designation or title, it would be liable, I think, to be held to be an assumption on his part of the title.

192. A witness of high legal authority, whom we examined on a former occasion, gave it as his opinion that it would be desirable if all the clauses of the Ecclesiastical Titles Act, except only the first, were to be repealed, so leaving out all the penalties; have you considered the subject in that light?
I conceive it is quite competent for the State to declare that the assumption of those titles shall be unlawful, and void for all purposes of law.

193. Should you consider it desirable, considering the irritation which has followed the passing of this Act, that the legislation in future should be confined to the first clause of this Ecclesiastical Titles Act, or to some equivalent,

valent, and that the pecuniary penalties of the subsequent clauses should not be retained?

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I think that it is unnecessary that those penalties should be retained for the purpose of giving effect to the first clause. The first clause is the important clause, declaring all jurisdiction or title conferred by the brief to be unlawful and void.

194. You are aware that no penalties have been recovered, or sought to be recovered, under the subsequent clauses?

I am.

195. Do you consider it desirable, from your knowledge of the law, that any statute should remain upon the statute book imposing penalties or prohibitions which are never in any case attempted to be enforced?

I think such statutes ought not to remain on the statute book.

196. You are aware of many cases in which statutes open to that objection have been repealed within the last few years?

Yes.

197. And you consider that course of legislation, speaking generally, to be desirable?

I do.

198. Applying that principle to this particular Act, do you see any reason why it should form an exception to the general course of legislation which you have described, and why we should retain penalties which are never to be enforced?

Personally, I think it would be desirable to repeal the penalties.

199. Supposing those penalties were to be repealed, what would be the precise state of the law with regard to Roman Catholic prelates; would it differ materially from what in practice prevails at present, the penalties not being enforced and the titles being assumed?

The law would be practically the same, with the exception that no precise penalty could be enforced for the assumption of a title.

200. It would not leave the state of things entirely as it was before the passing of this Act, because almost precisely at that time the old system of the vicars apostolic ceased, did it not?

It did, at that time, I believe.

201. Therefore we should have a new state of things to deal with, there being Roman Catholic territorial titles in England without any law against them, but such as this first clause contains?

Of course, your Lordship's observation would apply to the repeal of the 10th of Geo. 4 as well. There would be no statute then, of course, forbidding the assumption of a title.

202. Would not the first clause, of which we are speaking, in the Ecclesiastical Titles Act, remain?

So far, the title would be unlawful and void.

203. Lord *Lyveden.*] If it was unlawful and without penalties, what would be the consequence, or result, to any person who assumed those titles?

The title no doubt would be deemed unlawful and void, but I doubt whether it would be a misdemeanour to use it. The title would be a void title; there could be no legal effect given to it. I apprehend that those titles being declared unlawful and void, they could not be recognised in a court of law.

204. But would not the taking away of these penalties make this Act still more a dead letter than it has been with the penalties?

It may not altogether be a dead letter.

205. Nothing has been done under it, has it?

But many things may have been prevented being done, which might have been done but for this Act.

206. But supposing that clause to remain alone, what penal consequences could result to the person violating it?

I do not think that anybody would be subject to any penal consequences.

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207. To what consequences would he be subject; how would that clause alone prevent his taking the title if he chose to assume it?

It would depend upon the purpose for which the title was taken. It could not be taken for any purpose of law; for instance, he could not take property under that title.

208. Do you mean that he could not sue under that title?

He could not sue under it.

209. But he might assume it, and you say you doubt whether it would be a misdemeanour. Surely, if there was no penalty, no one would prosecute for a misdemeanour?

I doubt whether those words in the first clause would make it a misdemeanour.

210. *Archbishop of York.*] But apart from the penalties there would be a wish to obey the law; and I suppose there has been a considerable restraint upon the use of the titles by the Act, apart from the fear of the penalties?

I should think so. The title has never been recognised by any court of law, or by any authority representing the Crown, that I am aware of.

211. Earl of *Carnarvon.*] I think I understood you to express not a decided opinion, but a doubtful opinion, as to how far anybody would be liable to prosecution for misdemeanour under the first clause alone?

I think the word "unlawful" means not sanctioned by law. I do not think it would make it a misdemeanour to use a title.

212. Lord *Somerhill.*] Does not that rather apply to the instrument recited than to the action of any individual, except that of the Pope?

There are several expressions used in this first clause, which have, of course, very different effects. As regards the word "jurisdiction," for instance, all jurisdiction conferred by the brief is declared to be unlawful and void; that would not, I apprehend, subject to punishment any of the clergy who exercised, whatever might be the spiritual jurisdiction, or what they might term the spiritual jurisdiction.

213. Earl of *Carnarvon.*] Supposing that the clause ran to the effect that "all acts done under such jurisdiction were unlawful," then I presume those acts would expose the person that did them to a charge of misdemeanour?

There is very great difficulty in dealing with some of those expressions. Assuming that the term "jurisdiction" is used in the sense in which the State would use it, namely, a power to administer law and to enforce law, any attempt of that sort would be unlawful and void; but of course the answer that is made is, that "the jurisdiction which we claim to exercise is a spiritual jurisdiction over the consciences of our clergy." Then that spiritual jurisdiction over the consciences of their clergy is not what is meant here by the term "jurisdiction"; it is something different. Perhaps your Lordships will allow me to add that these are very subtle questions, and might perhaps require longer time than is now allowed me.

214. Duke of *Somerset.*] Are the Committee to understand, from your former answer, that you do not consider the contravention of the precise enactment of an Act of Parliament to be in itself a misdemeanour?

If a thing is forbidden to be done, then it is a misdemeanour.

215. We have had evidence here that if there is a precise enactment, the contravention of such a precise enactment would be in itself a misdemeanour; would that be your view?

That, I apprehend, is the law.

216. Then do you not consider the first clause in itself to be of the nature of a precise enactment?

I rather consider it as a declaration.

217. You do not consider it an enactment?

No. It says, "they are and shall be and be deemed unlawful and void."

218. You do not consider that a declaration of that kind has the force of an enactment?

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Your Grace will perceive that in the preamble it says, "Be it therefore declared and enacted." That is the form in which, I believe, what are called declaratory Acts are generally passed, and this first clause appears to me to be a declaratory clause. The second, your Grace will perceive, is an enactment. "And be it enacted"; there is no declaration there. That is forbidden to be done indirectly, by saying that if it is done, the parties so offending shall pay a penalty.

219. Then that would come to the effect that all mere declaratory enactments are of no value?
They are generally supposed to declare in formal language the common law.

220. Earl of *Carnarvon.*] With a view of clearing up this point, may I ask you whether it would be your opinion that, supposing the first clause was retained as it now stands, and that the second went on to enact that "any person who shall obtain or cause to be procured from the Bishop of Rome any bull, brief, rescript, or letters apostolical, or any other instrument or writing for the purpose of constituting any such archbishop," and so forth, "shall be held to be acting in contravention of the first clause," that would expose him then to the pains and penalties of misdemeanour, whatever they are.
If it went on to enact that he should be taken and held in all courts to be doing an unlawful act, I think it would be a misdemeanour to do it.

221. Supposing, therefore, that that course were adopted, the Act would be simply changed to this extent, that for a penalty of 100 *l.* you would substitute the penalties of misdemeanour?
It would be so.

222. Lord *Redesdale.*] But is not the penalty in the second clause confined to a particular matter to which the particular penalty is applied?
Yes, and the operation of the Act would be more extensive, I think, if the alteration was adopted which my Lord Carnarvon has suggested, because it would constitute a large class of acts, whatever they might be, contraventions of the Statute.

223. Would it not be open to proceed under the first clause in the same manner against anything which is not specifically provided for in the second clause, whether the second clause was repealed or not?
Yes, I think so.

224. Then, at the present moment, there is the power of proceeding under the first clause, which is a mere declaration of what the law of the land was before the Act was passed?
That may be so, but the power of proceeding would not depend upon this first clause, but upon the pre-existing law of the land.

225. Your opinion has been asked as to whether, fairly or not, it is an objection to the statute, that the penalties of it are not enforced, and whether, because the penalties have not been enforced, therefore they should be repealed?
I think that where an Act of Parliament has been allowed to remain a dead letter for a considerable length of time, it either shows that it has been thought to be inexpedient to enforce it, or that for some other good reason it has not been enforced.

226. Is it not a provision, with regard to penalties under that Act, that the consent of the Attorney General must be had to every prosecution?
It is so, or of Her Majesty's Advocate in Scotland.

227. Do you not suppose that that was to prevent any vexatious proceedings, where the conduct of the parties did not appear to render the proceedings necessary?
Certainly.

228. Do you not suppose that there might be conduct on the part of some persons, that has not been hitherto exhibited, which might render it desirable that the Crown should direct prosecution?
I think there might be such cases.

 229. Then

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229. Then there is a reason why no prosecution has taken place hitherto; that would take away the objection as to the penalties under the Act not having been enforced, would it not?

I presume that nothing has been done which has been thought to require its enforcement.

230. Earl of *Harrowby.*] We have been told by previous witnesses, that the Roman Catholics have taken great care to observe this enactment, and that the dignitaries of their church have so styled themselves as not to come within its reach; is not that a sufficient reason for its being a dead letter, without its being an Act of no value?

That may be so; but then it is not a dead letter.

231. This first clause says that certain documents shall be unlawful and void; is it not rather intended to disqualify documents and Acts as having authority, than as penal against individuals?

Yes; the object appears to be to declare that the brief, so far as those matters were concerned, was of no legal effect in this country.

232. Then supposing that there were no prohibition against the assumption of ecclesiastical titles, would the acts done by the Roman Catholic ecclesiastical authorities have any increased sanction or authority before the courts of law?

I should think not.

233. But supposing that the first clause were repealed also, and supposing that there were no specific enactment upon that subject, but that things were replaced in the condition in which they were before this Act was passed, would any increased sanction in a court of law be given to any acts done by those ecclesiastical authorities; would they be able to plead ecclesiastical sanction simply resting upon the authority of dignitaries of the Church of Rome, if there were no such enactment as this at all?

In the sense in which they would come before the courts as voluntary religious bodies they would, of course, be able to refer to whatever might be in those documents as explanatory of the nature of their constitution; but those documents would have no authority *proprio vigore* in our courts.

234. It would merely be a consensual authority?

It would be so in a certain sense.

235. That exists now in spite of this Act, and it would have great force, would it not, if no such Act were in the statute book?

Assuming that this Act was repealed entirely, I apprehend that the effect of it would be that certain acts might be noticed in the courts of law, which at present could not be noticed.

236. They would still have no sanction as part of the law of the land, but would they have more sanction as consensual acts, as acts of an authority by which parties have consented to be bound.

Presuming, we will say, that a question arose in regard to the title of the Archbishop of Dublin, I apprehend that if there was no such clause as this, evidence might be given to show that that title meant the Archbishop of the Latin Church in Dublin, and not the Archbishop of the United Church of England and Ireland; but of course now no evidence could be admitted at all; the title under the brief could not be recognised, I apprehend.

237. Then the value of this clause would be only rather to avoid confusion and ambiguity and doubt, as to which bishop or archbishop might be in question?

I apprehend that it was conceived at the time that all titles of honour, although of an ecclesiastical character, ought to emanate from the Crown.

238. But would not the sanction in a court of law be changed by the repeal of this enactment?

With regard to the title of a titular bishop, in that sense, I apprehend, if this statute were repealed, there would be nothing to prevent a court of law looking into the meaning of the title, as to who was really designated by it.

239. Under this Act could a bull of the Pope be brought into court, as settling a question between two claimants to a Roman Catholic benefice?

I do

I do not think that it could be looked at by a court of law.

240. But would it be if this Act were removed, as part of the consensual jurisdiction by which the parties had agreed to be bound?
There, I think, we must go back to some earlier Acts of Parliament.

241. Then you would go back to previous legislation?
Yes.

242. *Lord Archbishop of York.*] Supposing that this Act were wholly repealed, and not merely that the penalties were repealed, what Act then would govern the case of a foreign Power, ecclesiastical or otherwise, giving territorial designations in this country?
There is no statute, that I am aware of, which deals with the question of a mere title.

243. That would be as to territorial title, and the jurisdiction consequent upon that territorial title; but there would be the Roman Catholic Relief Act, of course?
If your Grace will allow me, I would say that the difference between the two Acts seems to be this--that the 10th of George the 4th, chap. 7, sec. 24, applied to existing bishopries and deaneries. The words are: "If any person shall assume or use the name, style, or title of archbishop of any province, or bishop of any bishopric, or dean of any deanery in England or Ireland." I rather think that provision meant existing bishoprics, and then, when we come to this Ecclesiastical Titles Act, the words are, "assume or use the name, style, or title of archbishop, bishop, or dean of any city, town or place or of any territory or district."

244. Earl of *Carnarvon.*] Would not the terms, "archbishop of any province and bishop of any bishopric" have a prospective effect, as well as a reference to the existing state of things.
If may be so; but as it is a penal statute it would be construed, I think, most favourably to the party. I consider the terms "province" and "bishopric" mean a province or bishopric settled by law.

245. *Chairman.*] Looking at the question in a legal point of view, do you conceive that any evil or inconvenience would follow, supposing the Ecclesiastical Titles Act were wholly or entirely repealed?
The question is a very large one, requiring that we should look back to previous Acts of Parliament; but assuming that the first clause was declaratory of the common law as it existed, then I apprehend that the law would still exist, although this Act was repealed; but I would rather not commit myself as to what the effect would be, without looking a little more carefully into the statute law.

246. There is one other branch of the subject upon which I should like to ask you a question. You are aware that in the Ecclesiastical Titles Act there is a clause exempting from its operation the bishops of the episcopal body in Scotland?
There is.

247. Does it seem to you free from objection, that in a law of general operation, or intended to be of general operation, as vindicating the Queen's authority in conferring territorial titles, there should be an exception made for one class only of Her Majesty's subjects?
I presume that the difference was made because the titles under the Papal brief were conferred by a foreign authority, whereas the Scotch titles were merely self-assumed, whatever those titles might be.

248. But, in both cases, nevertheless, they were conferred without any reference to the Queen's jurisdiction and authority?
They would be so, of course; the Episcopal Church in Scotland being only tolerated, as your Lordships are aware, under Acts of Parliament.

249. And therefore, if that saving clause had not been inserted, the bishops of the episcopal body in Scotland might have been liable to penalties no less than the Roman Catholic prelates, might they not?
I do not think they would have been within the spirit of this Act, because the preamble of this Act recites what had been done by the brief, and that it

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was expedient to prohibit the assumption of such titles; and then it goes on to enact, and I think those enactments would have been held to be limited to the titles taken under the brief.

250. Then, if so, what was the object of that clause at all?
Probably it was inserted *ex majori cautelâ*.

251. Duke of *Somerset*.] You have studied a good deal questions of international law, I think; is there any country in Europe which allows a foreign sovereign to exercise jurisdiction within its boundaries, without the consent of the sovereign power of the country?
None, that I am aware of.

252. Then if it were allowed in England it would be an exception to the general law of Europe, as far as you are acquainted with it?
I am not aware that any foreign Power exercises any jurisdiction within any country of Europe by mere sufferance.

253. Earl of *Harrowby*.] What do you mean by sufferance?
There is what is called the Foreign Jurisdiction Act, and in Orders in Council issued under it there is sometimes recited that Her Majesty, by sufferance, exercises jurisdiction within a foreign country; but these foreign countries have been always Asiatic or African, and not European, and I am not aware of any European Power that exercises jurisdiction by sufferance within the dominions of another European Power.

254. Earl *Granville*.] Is Switzerland an exception?
I am not aware that it is.

255. Earl of *Carnarvon*.] Would the appointment of Bishop of Jerusalem, being within the confines of Turkey, Abyssinia, and I believe one or two other countries, in any degree fall within the scope of your last answer?
I think not. He was appointed under a special Act of Parliament.

256. Was not there a difference in the drawing of the patent to this extent, that he was called the Bishop in Jerusalem, as opposed to the Bishop of Jerusalem?
Yes; he was consecrated to be Bishop of the United Church of England and Ireland in Jerusalem under a license from the Crown, not under Letters Patent.

257. *Lord Archbishop of York*.] I am reading from your book on the subject of the Queen's license to consecrate Dr. Alexander; do you remember the words "spiritual jurisdiction over the ministers of British congregations of the United Church of England and Ireland, and over such other Protestant congregations as may be desirous of placing themselves under his authority." That does not give jurisdiction, or claim to give it, over all the persons within the territory?
No.

258. *Lord Bishop of London*.] Was not that done with the consent of the Sultan, the sovereign of the country?
I believe that there was, as a matter of fact, a diplomatic arrangement with the Government of the Sultan.

259. Lord *Somerhill*.] Do you happen to have had occasion to consider how the case is in Russia; you are probably aware that for a long time there has been a Protestant Church established in Russia, for I should think now very nearly a hundred years, and that there is a Protestant English congregation there; is not that congregation under the jurisdiction, to a certain degree, of the Bishop of London, who I believe appoints, or the Queen appoints, the clergyman, who has been recognised by the Russian Government?
The Protestant Church at St. Petersburgh, which is probably the church to which your Lordship refers, was originally the church or chapel of the British factory; that British factory was established under a convention of some kind or other with the Czar of the day; that factory was abolished in the year 1807 by proclamation of the Emperor, and there has been no factory since; but although the factory was abolished, and with it the ex-territorial privileges of the merchants, or the inhabitants of that factory, the Russia Company seems to have continued to reside there, and to have carried on their business, and

and a chaplain officiated in their chapel, and married, and continued, in fact, to exercise his functions precisely in the same way as when the factory was in existence.

260. All through the war?

Possibly; and my Lord Bishop of London, I think, licensed the chaplain there, inasmuch as in the year 1823 an Act of Parliament was passed to legalise all the marriages which had been solemnized since 1807 in the chapel of the Russia Company, either by the chaplain, or by a person officiating under the license of the Bishop of London, though I am not quite certain about that; I think that it was by the chaplain of the Russia Company, or a person officiating in his stead. It was in the case of Hamburgh that another Act was brought in, in the year 1833, to legalize marriages solemnized in the British Episcopal Chapel there, after the factory was abolished, by the chaplain appointed by the Bishop of London.

261. In that way the Russian Government in some degree recognised a foreign ecclesiastical jurisdiction within the Russian dominions, did they not?

I believe (but I am only expressing my belief) that under the Russian law marriages solemnized in any chapel or church belonging to foreigners, according to their forms and ceremonies, are good and valid.

262. Earl of *Harrowby*.] By the *lex loci* or the *lex gentis*?

Yes; probably my Lord Bishop of London's memory might be more accurate than mine with regard to marriages in the British chapel at Riga some years ago, when it was said that, by the Russian law, those marriages were good marriages, and the object was to get them in some way recognized by the statute law of England.

263. *Lord Privy Seal.*] But when the Queen, or the Government by the Queen's permission, appoints a chaplain to an English congregation in some town abroad, the arrangements having been previously made, which are that half should be paid by the congregation and half by the Government, is it not necessary, and does it not always follow, that the permission of that Government is obtained at the same time, an intimation being given to the foreign Government that such is our wish, and we by that intimation accepting the idea, that we have no power of doing it without the permission of the said Government?

I am not informed upon the subject, but I should think that the Foreign Office never allowed a stipend to a chaplain, except where there has been the full consent of the sovereign of the country, and that as far as the license of the Bishop of London is concerned, that is a matter of arrangement on the part of the Foreign Office, for the purpose of securing some kind of certificate of the fitness of the person; but that license itself has no effect whatever in regard to his right to officiate as such chaplain.

264. Lord *Colchester*.] Would not the position of chaplain be considered personal, rather than territorial?

Yes; he would have no territorial status at all.

265. Then there is no European monarchy which allows the Pope to appoint bishops, except under a concordat, without the sovereign's consent?

I believe not. An increase in the number of Roman Catholic Bishops in Belgium, at the time when Belgium was united with the Netherlands, was proposed to be carried out under a concordat with the King of the Netherlands. The arrangements with Prussia were under what was called a bull of circumscription, after diplomatic negociation, with the consent of the King of Prussia. The establishment of a new bishopric or archbishopric in Poland at the end of the last century, and of one, I think, in the present century, was also after a diplomatic arrangement with the Czar of Russia. I am not quite certain what may have happened recently in the Netherlands, but certainly at the time when the brief of the Pope was issued there was no State in Europe, where the Sovereign is not of the Roman Catholic communion, in which the Pope had created a bishopric without the consent of the Sovereign.

266. I understood that you were not prepared to speak as to whether the Pope had any authority without the consent of the Executive in Switzerland?

With regard to Switzerland, I am not in a position to speak.

 267. *Lord*

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267. *Lord Bishop of London.*] Do you happen to know what is the state of the case in the Protestant parts of Germany; is there a Roman Catholic bishop in those parts of Prussia which are essentially Protestant, and if so, what authority does he hold?

I cannot at this moment say.

268. Lord *Colchester.*] In the United States of America, is there any restriction upon the appointment of Roman Catholic bishops?

Not that I am aware of. I may add that in Hanover there was what was called a bull of circumscription, which was the result of a diplomatic arrangement.

269. Then it appears that, in almost every monarchy, there is this restriction on the part of the Pope in appointing without the consent of the sovereign, though perhaps that is not the case in a republic?

With regard to Switzerland, some of the cantons are Roman Catholic; and I am not quite certain at the present moment whether the question of religion is at all within the scope of the Federal authority.

270. Several Roman Catholic countries have imposed conditions, have they not?

I believe so.

271. *Lord Privy Seal.*] Do you remember the case of our appointing a bishop at Gibraltar, and do you remember what his diocese was supposed to be?

Malta and Gibraltar.

272. But was it confined to that only?

That was his diocese in regard to his Letters Patent.

273. But his supervision was to extend over all the English Protestant congregations on the shores of the Mediterranean, and on the coast of Portugal, was it not?

Not as expressed in the Letters Patent of the Crown; but my impression is that letters were sent round from the Foreign Office to the different chaplains, directing them when the bishop visited them, to attend to him.

274. And, practically, his duty is to supervise his various congregations?

He has a sort of superintendence of them, but not in the way of jurisdiction.

275. Did we not carefully avoid any collision with the Roman Catholic Church, by giving him the title of Bishop of Gibraltar (which can scarcely be called a colony, but is merely a garrison), instead of Bishop of Malta, which has a large civil population.

I have understood that that was so.

276. That was done under the impression that it would have been offensive to the Roman Catholic Church, if we had, as it were, usurped a title of which they were at that time in possession.

Yes; and of course, as we have recognized a Roman Catholic Bishop of Malta, it would have produced confusion.

277. *Lord Bishop of London.*] You are aware that, in the Bishop of London's authority over foreign chaplains, the greatest care is taken to let it be understood that he exercises no territorial jurisdiction?

So I have understood.

278. And that, even as regards the consecration of a church or churchyard, no formal consecration really takes place, but there is merely a religious service?

Quite so.

279. And that is done expressly on the ground that he is not to be supposed to claim anything like jurisdiction over a foreign country?

Of course, in a consecration which takes place in your Lordship's diocese in England, there is a judicial sentence, which is not part of the ceremony abroad.

280. Earl of *Harrowby.*] How far do you conceive the authority of the canon law of the Roman Catholic Church to be affected in one way or another, by the transfer from the regimen of the vicars apostolic to the episcopal regimen; has

has it more or less sanction in consequence, or is the sanction in any way varied?

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The canon law of the Roman Catholic Church would be more effectually operative amongst the members of that Church under the present system. The regimen of vicars apostolic was quite exceptional; the Pope, as immediate bishop over the Roman Catholics in England, as long as there were no bishops in ordinary, exercised his authority through vicars apostolic, whose office had its foundation in the curial law of the Roman Pontiffs, rather than in the canon law of the Roman Catholic Church.

281. That alteration affected in some degree the relations of the Roman Catholic authorities among themselves, did it not?

It placed them, no doubt, in more complete ecclesiastical order.

282. Were they put more distinctly under the protection of a legal system, as among themselves, by the institution of the episcopal jurisdiction under the Pope?

I should say, speaking from outside the Roman Catholic Church, that they would be more under the protection of their general ecclesiastical law, the *corpus juris canonici*, under this system, than under the vicars apostolic.

283. But, as regards those who were outside the general state, the sanction would in no way be altered, would it; their relation to the State would not be altered; they would not be more or less enabled to plead any canon law before an English tribunal?

I think not.

284. Therefore, as regards parties outside, the change was of no importance, except that the adoption of titles in itself was considered a great breach of comity, if one may say so, to the country in which it was established?

Yes.

285. But, legally, the relation of Roman Catholic authorities to English law was in no way altered?

Their legal status, as regards the law of England, would not be in any way affected by the brief of the Pope.

[The Witness is directed to withdraw.

The Right Honourable Sir JOSEPH NAPIER, Baronet, is called in; and Examined, as follows:

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286. *Chairman.*] IN the year 1851 you were, I believe, in the House of Commons as one of the Members for the University of Dublin?

I was.

287. You took some part in the passing of the Ecclesiastical Titles Act, did you not?

I did; I took considerable interest in it.

288. Did you support it unreservedly, or were there any portions of it which you thought might have been improved?

My support was rather to the principle of the measure as defensive.

289. By the principle of that Act you mean, I presume, as asserting the Queen's authority in regard to foreign jurisdiction?

I thought there was a defiant aggression upon the independence of this country and the Queen's authority, and that it was proper and becoming to the nation in some mode to protest against that?

290. Did you think it judicious to append to that protest any penalties against those who contravened the principle?

I take it that, in respect of penalties, the only change was made in the law; a great many extravagant, and, I think, exaggerated statements have been made of the effect of that Act. I consider that it in nowise interfered with the freedom of the Roman Catholic religion as it was enjoyed, either by its prelates or its

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its laity. The only addition made to the law as it then stood was in the imposition of a penalty for certain acts which were unlawful before. The parts of the Act that did not relate to penalties were merely declaratory of the existing law.

291. Since that time you, having been Lord Chancellor of Ireland, have never in any case felt it your duty to advise, or to press for the enforcement of those penalties?

No. I do not remember any case in which I could have properly interfered. There was a proviso put at the end of the Act that it should not affect the Charitable Bequests Act. That I did not oppose, because I thought it simply superfluous; it could not have interfered with the law of Bequests. There are cases in which a Roman Catholic Prelate may have been described in a will as of such a diocese, and there it is merely regarded as a *designatio personæ*.

292. Still the Act providing against the assumption of ecclesiastical titles, and those titles in fact having been assumed, the law has not been observed?

There have been cases in which they have been assumed, and some in which they have not. I remember saying privately at the time, to some of those who were interested in passing the Bill, that the penalties would be of no value, because they could not get sufficient legal evidence, even if they were disposed to enforce the penalty; and besides, I thought, with regard to that part of the Bill, that it was legislating against names, and leaving the real evil untouched.

293. Will you explain that answer a little further; what was the real evil unconnected with the names?

The real evil I take to be this; I see that it has been very plainly stated by Archbishop Manning, in his evidence before the Committee of the House of Commons, in answer to Question 894. He explains the nature of their claims. He says: "The whole hierarchy throughout all the world to this hour has proceeded upon one uniform principle, namely, that the Pope, who possesses the supreme, universal, spiritual and territorial jurisdiction, divests himself of the ordinary use of it by constituting bishops and forming dioceses." Then I take it that the aggression was a claim to establish that jurisdiction here, and that is worked out through the medium of a local hierarchy, Papal bulls, the canon law of Rome, and what they call "the reserved cases." And you leave these without sufficient restraint. Before the Reformation you had them restrained by the law of this country, but now they ask unrestricted freedom to carry out that, which is the development of the Papal system, establishing in these countries the dominion of the Pope, and claiming to exercise spiritual jurisdiction, above the law of the land; so that you have a jurisdiction not subject to the law, that claims to be recognized by the law. I take it that this is a great anomaly. Then their canon law, as the code of the dominion of the Pope for all the world wherever they can establish it, is more or less in conflict with the constitution and the laws of this country.

294. *Lord Archbishop of York.*] The bulls of the Pope relate sometimes to other than ecclesiastical affairs, do they not?

Yes, in many instances.

295. They relate sometimes to temporal and political affairs, and that is one ground upon which the Sovereign may claim the right of *placet* or *exequatur*?

In every country in Europe, I take it that there is some kind of restriction upon them; they have it done in various ways, and before the Reformation it was restrained in this country, so as to keep their system within the bounds of the law, and not to rise above the level of the law; but in the state of freedom which exists now in this country, if their full claim is allowed, you have this foreign jurisdiction introduced into the country, and it gets above the law.

296. Earl of *Harrowby.*] In all those cases of restriction to which you have alluded, was it not upon the ground that there were temporalities attached to this ecclesiastical position which the Sovereign would not allow to be enjoyed without

without some interference; have you any similar case to quote where no new temporalities were the consequence of the enjoyment of the dignities?

That was one reason, but not the only reason; where the canon law now is introduced, if it is to be executed without any kind of restraint, then you have temporal matters interfered with to a very large extent.

297. *Lord Privy Seal.*] You have stated that before the Reformation the law placed a restriction upon those assumed powers of the Pope; was that restriction imposed by Act of Parliament?

Before the Reformation there could be no canons introduced into this country, and enforced by the Church courts; they would have been immediately restrained by prohibition, if they attempted to enforce any unlawful canon.

298. Were there any Acts of Parliament to restrict the claims of the Pope before the Reformation?

I take it that both the common law and Acts of Parliament restrained the interference of the Pope here.

299. But were there not Acts as old as the time of Richard the Second, and other Acts?

That Act of Richard the Second is a mere embodiment of the common law; it is a mere declaratory Act embodying the principles of the common law. The Queen is supreme under God; and the Queen herself is subject to law; but this power and jurisdiction of the Pope claims to be above the law. I see one of the witnesses before the House of Commons Committee says, that he holds the Titles Act to be unlawful and void, and that our law has no right to touch the spiritual jurisdiction of the Pope.

300. But do you mean to say that we are less protected at this moment than we were in the days of Richard the Second, in the time before the Reformation?

I do.

301. Earl of *Carnarvon.*] Is not Archbishop Manning's argument (I do not pronounce upon the validity or invalidity of it) that the claim which is set up is a purely spiritual one, binding only *in foro conscientiæ*, and having no temporal value whatever?

That is what he said. There are two ambiguous, or at least, undefined words, "spiritual" and "jurisdiction." If the mere matter was episcopal influence as connected with the *forum conscientiæ*, then that is not touched by the Titles Act at all; but jurisdiction is a determination of right, and there is always law connected with jurisdiction: it is not the influence of authority merely. I may say that, in taking part in the Ecclesiastical Titles Bill, no one was more anxious than I was, that there should be no kind of interference with the exercise of the Roman Catholic religion as it was theretofore enjoyed, but that it should be perfectly free in all matters of conscience; and at the time of the passing of the Act of 1829, there was a clause inserted in that Act which was substantially the same as in the Titles Act; and the Roman Catholic bishops in Ireland, every one of them, signed a document in which they said they accepted that Act with gratitude, and that their rights were attained without a compromise of the freedom of their church.

302. With regard to that clause in the Relief Act to which you have alluded, is there not this distinction, that whereas the Ecclesiastical Titles Act affixes a certain penalty upon any bishop who may, under the authority of the Pope, assume jurisdiction in England, the Relief Act enacts a penalty upon any bishop who shall, under the authority of the Pope, assume any titular jurisdiction with an ecclesiastical title held in England or Ireland?

There may be that construction of the clause so far as regards the penalty; but the clause says in its recital that "Whereas the right and title of archbishops to their respective provinces, of bishops to their sees, and of deans to their deaneries, have been settled and established by law,"—that was by the previous law. Then it goes on to say, "If any person other than the person thereunto authorised by law shall assume the title of archbishop of any province, bishop of any bishopric, or dean of any deanery, in England or Ireland, he shall for such offence forfeit 100 *l.*" And why was that? Because the title

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by law, in the case of a bishop for instance, depended upon two things, canonical consecration and the Queen's nomination. He must be a bishop of the Catholic Church according to the law of this country, and he must be nominated to his diocese by the Queen's authority. It might have been that the penalty would not have been incurred under this clause by taking the name of a diocese not then created; yet it is quite plain that the enactment assumes and goes upon the general principle of law, which makes it unlawful for any other than a dignitary of the Church, nominated by the Queen, to assume a territorial title. With regard to the claim now made for the repeal of the Titles Act, if it were repealed, the common law would remain as fresh as ever, only with this difference, that you might throw it all into confusion, and leave the impression upon the minds of the Roman Catholic hierarchy, or the people of the Roman Catholic communion, that we had given up the whole thing. I think that it is most important that whatever is done now, we should do it with our eyes open, and see all the consequences, and let everything be done aboveboard. For myself, I say heartily that I do not desire to see anything done, or that anything should remain in the statute book, which can be said to press upon the conscience of the Roman Catholics or upon the freedom of their religion, so far as it is consistent with the fundamental principles of the constitution of this country.

303. *Lord Archbishop of York.*] Have you considered any mode by which the reasonable claims of Roman Catholics in this country to have a consensual jurisdiction could be reconciled with the power of the Sovereign as the sole fountain of all jurisdiction and of all titles?

I remember at the time of the Ecclesiastical Titles Bill (I am betraying no confidence in saying it), Lord Derby was exceedingly anxious about it to see what was really best to be done; and I attended a conference at his house, with Lord Lyndhurst and some others; and we thought at that time that it would have been wiser to have been content with passing Parliamentary resolutions then, and to have had a full investigation into the relations of the Roman Catholic subjects of the Queen, and those in which they stood to the See of Rome, and by ascertaining what the canon law of their church was, to separate that portion which touched upon things merely spiritual, from that which touched upon temporal things, which could not be taken out of the control of the law of the land; but I do confess that it is a most difficult subject as to the way in which the prohibition of the constitution, if I may so term it, is to be enforced, and as to the way in which the independence of this country and the Queen's authority are to be effectually maintained.

304. *Chairman.*] Then, as I understand you, the general feeling at this meeting which you mention held at Lord Derby's, was that it might have been wiser, instead of an Act of Parliament, to have resolutions in the manner of a protest?

That was the conclusion, I think, that we came to; and that it would have been a more satisfactory course if it were followed up by a complete inquiry.

305. That there should have been resolutions in the first instance, and an inquiry afterwards?

Just so. The resolutions seemed to be necessary from the state of public feeling at the time, as a kind of embodiment of it, a kind of public protest; and then that should have been followed up by a very searching and complete inquiry into the code of canon law, for that is where I think the real difficulty is.

306. Duke of *Somerset.*] Then I understand you to say, that a mere repeal of the Ecclesiastical Titles Act would only leave the whole question in confusion?

I think so.

307. Therefore if it is *bonâ fide* intended to repeal the Ecclesiastical Titles Act, we ought to go further and look back at other Acts, and see how the law exactly stands?

No doubt: for instance in the year 1846 you passed the Religious Opinions Relief Act. Although you repealed the penalties, and some of the matters connected

connected with bringing in bulls, the law remains. I refer to the 9 & 10 Vict. c. 59, and to an earlier Act, the 7 & 8 Vict. c. 102.

308. The penalties were repealed, but the law remains?
The penalties were repealed, but the law remains, and in much confusion.

309. Then the penalties having been repealed, what force has that law?
That was a matter of doubt at the time of the Ecclesiastical Titles Bill; the Government of the day had some doubts then whether they could proceed upon that law. Then, again, I think that by that same Act, a clergyman of the Church who affirms this foreign supremacy is liable to be deprived of his benefice. That remains still, and in the law of 1866, the last Act about Parliamentary oaths, there was a proviso introduced in the House of Lords to say that nothing in the Act contained should weaken or affect the law as to the Queen's supremacy; so that it all remains.

310. Earl of *Carnarvon.*] Are those ancient Acts of Richard the 2nd and others to which allusion has been made, still upon the Statute Book, or have they been repealed, partially or wholly?
They are, I believe, on the Statute Book; what they declare is only the common law; the Act of Richard the 2nd has a long preamble, stating, in the old-fashioned way, that whereas by the constitution of this country this has ever been a free and independent nation, with no one above the King, who is, under God, supreme, and then it goes on to speak about the faithful Commons and the desire to protect the independence of the realm; it makes a regular speech, but it is all the common law.

311. And those Acts are in full existence?
They are in full existence, I believe, so far as they affirm the common law.

312. What makes the difficulty is this: I think at the time of the Act of 1829, the status of the Roman Catholic Church was very liberally settled; but the Roman Catholic Church is different from all others, and to let it in according to the fulness of its present claim would involve a complete denial, not only of the Queen's supremacy, but of the established rights of the Church now in possession. The State did everything in 1829 consistently with the fixed constitution of the country. I remember Archbishop Whately using the proverb, "An two ride of a horse, one must ride behind." You cannot have this claim allowed in the way that they require; if they get full scope, that must sweep away the present authority and position of the clergy of the Established Church of this realm.

313. Duke of *Somerset.*] Did I rightly understand you to say that, in the year 1829, the Catholic clergy and bishops were satisfied with the state of the law as then known?
I will give your Lordship a very striking proof of that; all the Roman Catholic Bishops in Ireland signed a pastoral address to the clergy and laity of their own communion, immediately after the passing of the Act of 1829 (I think it was in the beginning of the year 1830), and the expression they used as to the concessions made to them was that they had attained them "without a compromise of the freedom of their Church." In the same year in which the Ecclesiastical Titles Bill passed, Lord Monteagle was very angry about its extension to Ireland, and he addressed a letter to the Archbishop of Dublin, and in the autumn he sent me a copy of the letter, and when the thing was fresh in my mind I drew up an answer to it.

314. Lord *Somerhill.*] Did all the bishops sign it?
Every one of them, even Archbishop M'Hale.

315. Duke of *Somerset.*] As you have considered this subject, as the contents of the Pope's Apostolic letter apparently applied only to England, was it necessary to make the Act apply further than England, to which the Bull or the Pope's Apostolic letter applied?
There were two reasons for it; the first was a special reason with regard to Ireland, that during the time that the whole thing was being discussed, the Pope created a new See in Ireland; he divided the See of Ross and Cloyne; that occurred while the discussion was going on; but there was another obvious reason, I think—that we were going upon general principles. The constitution

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of this country is the same in England and in Ireland; it was a defensive measure upon our part, and when making a public protest against the aggression, it was not merely the particular act, but the act as a part of the system, to which we objected.

316. *Chairman.*] As having represented the University of Dublin, and having since filled the office of Lord Chancellor in Ireland, you are no doubt well acquainted with the feelings of the Protestants in that country; were they at that time very eager for the passing of the Ecclesiastical Titles Bill?

I do not think they were so furious about it as the English people were at the time; but they considered that the Papal brief was an aggression upon the constitution of this country and upon the church, and they joined very heartily in opposing it.

317. Does that feeling continue unaltered at the present time, and is much value attached to the retention of the Act, regard being had to the circumstance that no penalties have ever been sought to be recovered under it?

There were never any penalties sought to be recovered under it. I have mentioned that there would be extreme difficulty in proving a case.

318. My question was rather as to the feelings of the Protestants in Ireland, and as to whether they continued to attach the same importance to the Act after the experience they have had of its working or non-working, and what is their feeling at the present time with regard to its retention?

I do think they regard those penalties as merely illusory; and as a mode of remedying the grievance, I believe they regard them as of no value.

319. Am I to conclude, from what you say, that the general feeling of the Protestants in Ireland would be to see the Queen's prerogative asserted, but no penalties stated, legislatively, against those who assumed those titles?

I do not think they have any desire to enforce these penalties, but they decidedly wish to have the Queen's supremacy maintained. I may observe that, at the time of the passing of the Bequest Act, the subject was considered, and it was pressed in the House of Commons upon Sir James Graham to give Roman Catholic Prelates the titles of their dioceses, but he would not do so. He gave them their titles of archbishops and bishops; but I remember his expression was, "I have demurred, and still demur, to their taking their titles from localities." On the commission under the Charitable Bequests Act, they were arranged in order of rank, with this view, that, in the absence of the official chairman, the senior commissioner present was to preside, and then it was thought proper to arrange them in order of rank, so as to allow the Roman Catholics an opportunity of presiding; but, otherwise, I think the effect of that was nothing more than to call them archbishops and bishops. I remember the late Primate telling me that, when he was first made a bishop, when he went down to Cork, the first person that called upon him was the Roman Catholic bishop, who did not call himself by the name of the diocese, and they were on the best terms possible. In their public documents in Ireland before 1847, I do not remember that it was usual to assume local titles; in that very document I mentioned of the year 1830, they all signed by their Christian names and surnames, and "D. D.," I think.

320. Earl of *Harrowby.*] With the cross in front, to mark their episcopal character?

Yes. I have seen it sometimes in this way, "Paul, Archbishop, &c. &c."

321. *Chairman.*] Have you formed any clear opinion as to what course it might be best to take with regard to this Act; whether to leave it unaltered, whether to alter it, or whether to repeal it?

I think that it is exceedingly important that in any amendment of the law on this subject, our own position in this country should be very clearly defined, that there should be no mistake about it, that you should take care, if I might venture to say so, to have very clearly set forth the independence of this country and the Queen's supremacy, and that as regards the church in possession, which we hold to be the Catholic church here established, there should be no infringement upon her rights; I think all that should be done, without any mistake about it; but with regard to the pecuniary penalty, I think it is of no value.

322. *Archbishop*

322. *Archbishop of York.*] You would set forth in an Act which repealed this Act, a statement of the law and constitution of the country as to the point touched on in the Act?
It should be very clearly stated.

323. In the Act?
In the Act; and it should also be stated that the purpose and the cause of repealing the enactment as to penalties, was that the imposition of them was ineffectual.

324. Earl of *Harrowby.*] What would be the sanction of the first clause of the Act by itself; what effect would it have; would it act upon persons, or would it act only upon documents?
The first clause, I think, is that which condemns the Papal brief.

325. Would that create anything in the shape of misdemeanor, and would it, of itself, inflict a penalty upon any individual, or would it merely disqualify documents as described from being appealed to in a court of law?
That was discussed at the time, and Lord Cranworth's opinion was, that it would not create an offence.

326. But it would prevent those documents from being brought before a court of law as having authority, would it not?
They never come before a court of law; they would be of no legal value.

327. With regard to mixed marriages, what would be the effect?
They never come before a court of law. They have nothing to do with the legality of marriage.

328. Earl *Granville.*] I understand you do not attach great importance to those old Acts of Richard the 2nd, because they are merely a declaration of the undoubted common law of the country; then, would the repeal of this Act cause any danger, such as that suggested at the last meeting of the Committee, namely, to put a case, that if a Roman Catholic bishop suspended one of his priests contrary to the canon law, though the appeal might rest with the Pope as far as they were concerned, yet as civil rights might be involved, the court would, under these circumstances, if this Act was repealed, not consider itself prevented from entering into the question?
I do not think that the repeal of the Act would make any change in the law; but it is a very different thing, looking at this merely as a lawyer, and looking at it as regards the way in which it would affect the public mind.

329. *Archbishop of York.*] But it might cause confusion, by appearing to alter the law?
Yes. It must be done with great care.

330. Lord *Somerhill.*] You stated that the Irish Protestants considered the Bill a bad one when it was enacted?
They thought it was like firing a blank shot.

331. They thought it was not sufficiently stringent?
That it was not adequate as a remedy.

332. Earl of *Carnarvon.*] Your answer to Lord Granville implied, did it not, that the old statutes and the common law would prevent such a case as Lord Granville described being dealt with in the same way in which a trust deed might be brought into court?
I said that the old Act is merely historical, containing a record of what the law is; and although it were repealed, it would leave the common law where it was; and therefore, legally, it would make no difference. Civil rights would be decided according to English law in all cases.

333. Earl of *Harrowby.*] Would it leave the law as it stood before the Reformation, in regard to this point?
The constitutional law is just the same. The constitution of this country has always been domestic, and though there have been occasional acts of usurpation of the Pope, the law of the country is a domestic constitution in Church and State.

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334. But it was a battle-ground constantly between the Church and the State, was it not?

It was a most difficult question to deal with. As an illustration, I find this in Mr. Gladstone's pamphlet on the supremacy:—"There is no European country in which ecclesiastical societies are exempt from civil control," with the one exception. "In every other country of Europe, the Church is still, even for spiritual purposes, in more or less of subordination to the State. The principle of this control is admitted very generally by the Protestants of the Continent, while, in the case of the Roman Catholics, it is rendered necessary by their connection with a foreign see." He says, in another place: "That the Pope was the source of ecclesiastical jurisdiction in the English Church before the Reformation is an assertion of the gravest import, which ought not to be taken for granted. It is one which I believe to be false in history, false in law, and which, in my view as an Englishman, is degrading to the nation, and, as a Christian, to the Church." When Dr. Doyle was examined before a Committee of the House of Lords in 1825, he was asked: "Is the power of the Pope to nominate directly, either a native or a foreigner to a Roman Catholic bishopric in Ireland, now acknowledged by the Roman Catholic Church in Ireland?" He says; "It is acknowledged by us; he has such power.—*Q.* Has it, in point of fact, ever been exercised?—*A.* It has not, in point of fact, ever been exercised to my knowledge.—*Q.* Has any attempt been made to exercise it?—*A.* There has not.—*Q.* But he has the right?—*A.* I conceive he has.—*Q.* Who names to the office of dean?—*A.* The Pope appoints to the office of dean." If you observe the clause of the Emancipation Act, it is confined to bishops and deans, because these are the officers who are supposed to have jurisdiction; and they are named in the section of the Act, because if you once let in jurisdiction (I distinguish jurisdiction from spiritual authority in the way of influence), then you let in something that is above law, but ought to be controlled by law. The Queen could not at present make a diocese in England; it must be done by Parliament; it would be interfering with the existing dioceses. Here the Pope takes upon himself to interfere with these dioceses in a way in which the Queen could not do, which only Parliament could do. That is a power, I take it, which you cannot recognise. You may find it very difficult to prohibit it by legal process; but it is impossible, without surrendering the independence of the country and a fundamental principle of the constitution, that you can recognise it. Hooker puts it very neatly, in his own way, about the mode of appointing bishops. He says, "In a bishop there are three things to be considered: 1st. The power whereby he is distinguished from other pastors; 2nd. The special portion of the clergy and people over whom he is to exercise that bishoply power; 3rd. And the place of his seat or throne, together with the profits, pre-eminences, and honours thereunto belonging. The first, every bishop hath by consecration; the second, his election investeth him with; the third, he receiveth of the king alone." (Hooker's Ecclesiastical Polity, book viii. ch. vii. 1. 2.) "It is the king's mere grant which placeth, and the bishop's consecration which maketh bishops." (s. 3). "Neither do the kings of this land use herein any other than such prerogatives as foreign nations have been accustomed unto." (s. 4). The way in which I work out the thing is this. Roman Catholics believe in the spiritual power of the Pope. We have relieved them from swearing against that, though we have not altered the constitutional principle of supremacy. We cannot help their having that opinion. They consider that the Pope should nominate their bishops; he does not make the bishops; it is the consecration which makes the bishops. But when he nominates their bishops we have nothing to do with it. A bishop is consecrated, and the Roman Catholics in a given district accept of him, and that admission and acceptance of him by the Roman Catholics in a given place, as their bishop, gives him a sufficient status in the eye of the law; the law does not pry further into anything *in foro conscientiæ* as between them and him; so that in that way it is like what Hooker says of election, placing the bishop over the clergy or people who wish him to exercise his power. But if they deny our jurisdiction, and ignore our Church altogether, and the Pope asserts his principle of supreme dominion, and seeks to set it up, that is a thing, I take it, that in the whole history of this country has been uniformly protested against. We allow them perfect freedom of conscience and freedom of exercising religion, as Roman Catholics. I have read over the Roman Catholic evidence, and think it is most painful to read the

the exaggerations of the effect of this law, as if we were persecuting and oppressing them. I cannot now discover, and I never could get a distinct proof, that any lawful function that a Roman Catholic bishop could have exercised the day before the Act passed, was hindered by the passing of the Act. I do not believe, in my conscience, that there was any.

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335. *Lord Bishop of London.*] In comparing the authority which is claimed by the head of the Roman Catholic Church over the Roman Catholics, and that claimed by the government of the Wesleyans over the Wesleyans, do you consider the difference to be merely this—that the authority in one case rests with a foreign prince, and in the other with British subjects?

Just so.

336. But do you not also consider that the sort of authority claimed is entirely different?

Entirely different.

337. In what does the difference consist?

The difference is this; that the authority claimed in the case of the Pope is a foreign authority that claims to be above law. They say in the evidence that it is a spiritual jurisdiction; that it is a thing which the law has no right to touch; and then they define this spiritual jurisdiction for themselves, and put your law at arm's-length. You will find in the evidence of Bishop Moriarty, about the Act of Parliament, that he says in effect: "We treat it as unlawful and void. You might as well talk about repealing the Ten Commandments. I have my appointment, according to my opinion, by Divine right. That Divine right is above human right; it is a spiritual jurisdiction, and that your law cannot touch; and if you do touch it, the law in my view is null and void." Then they complain as if they were hindered from ordaining a priest, or as if they could not perform any of the regular functions appertaining to the office of a bishop, and huddle it all up together as a complication of grievances.

338. Do you consider that what is called spiritual jurisdiction really implies some temporal jurisdiction?

Yes, certainly.

339. And that is not the case with any other religious body?

No. Let me call your Lordship's attention to an illustration of it in the words of the famous Dr. O'Connor (Columbanus), who was a Roman Catholic. He says: "Until some more rational and Christian ideas of those spiritual jurisdictions are entertained by our exclusive doctors and synods, it is quite nugatory to allege that the oath of allegiance, which disclaims all power except spiritual, affords security either to the personal or national independence of our gentry and clergy, or to the tranquillity of the State. The word *spiritual* must be defined; its limits must be ascertained by law; for it is plain that, if abandoned to the waywardness of capricious interpretation, it is liable to the most glaring abuse." Moore, the poet and historian of Ireland, who was a Roman Catholic, says in his treatise on the Veto: "With respect to the distinction between spiritual and temporal power, by which you endeavour to reconcile your submission to the Pope with the free discharge of your duties as subjects and citizens, it is a security which the history of all the religions in the world too fully justifies a legislature in refusing to trust too implicitly. And, therefore, refine away as you will the spiritual authority of the Pope, there will still remain combined with it, in its present state, many gross particles of temporal power, which it is the duty of a wise Government to counteract by every effort consistent with the conscience of its subjects." With regard to the canon law touching temporal matters, it affects bequests of property. They have laws about bequests for pious uses, and for different purposes; they have one mode of administration, and our law has another. Then, again, their marriage law is different. Every year there is a Priest's Directory published, and every seven years it contains questions for the guidance of the conferences of the priests, under the orders of the bishops. The questions for this year were these: "(1) *De naturâ et principibus justitiæ et juris, atque de injuriâ tum in genere, tum in specie?* (2) *De restitutione in genere et in specie?* (3) *De Contractibus?* (4) *De Statutis, &c.*" For the year 1861 they published these questions: "(1) *An clerici teneantur legibus civilibus?* (2) *An leges Pontificiæ obligent*

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statim ac promulgatæ sunt? (3) *An sufficiat leges episcopales promulgari in civitate episcopali, et papales Romæ?* (4) *An obliget lex Ecclesiæ quæ, aliquo gubernio civili prohibente, acceptata non fuit?* (5) *An Episcopi possint leges Pontificias non acceptare?*"

340. How are those questions answered?

Those are to guide the conferences; they are issued by the bishops to direct the conferences of the priests, and then the priests are directed to train the consciences of their people upon them. There you have a question touching the restitution of property. That affects forfeited property in Ireland, which is at this time a very important subject. Bellarmine tells us the nature of this "spiritual jurisdiction." He says, "That the power of the Pontiff, properly, directly, and in itself, is spiritual; but that by it he can dispose of the temporal things of all Christians, when such a measure is necessary to the end of his spiritual power, to which the ends of all temporal powers are subordinate. He has no power merely temporal, and yet, in order to a spiritual good, he has the supreme power of disposing of temporal things. The spiritual power does not interfere in temporal concerns, but suffers all things to proceed so long as they do not oppose the spiritual end, or be not necessary to obtain it. But if anything of this sort occurs, the spiritual can and ought to coerce the temporal, by any way or means which may appear necessary." Now that is what gives so much importance to your not recognising these claims, beyond what is necessary for the free exercise of their religion. They seek now to have their titles recognised for the purposes of jurisdiction. How will it be in Ireland, supposing, for instance, a possible case; if you clear away the Church established by law, and the bishops placed in the dioceses by the Queen's authority, there would be clear space for the Papal system; the canon law would be the substantial law in a great part of the country.

341. Lord *Somerhill.*] Do you think that the present Ecclesiastical Titles Act is any effectual bar to that?

I do not, indeed; but the early sections of it are important, as setting forth the constitutional principles upon which we must take our stand; and I think that if, instead of the penalty, you had a complete searching inquiry into their canon law, by which they govern the people, something would come of it, and that there would be more effectual protection than by having a penalty which you do not enforce.

342. You think that that would be a guide to legislation?

I think so.

343. *Lord Bishop of London.*] I understand you to say that you think that it would be dangerous to the civil rights of the country to allow the Pope to have jurisdiction uncontrolled by the civil power?

I do; because I think it must be dangerous to allow any jurisdiction to be asserted in a country where that jurisdiction is not subject to the law of the land, and restrained by it.

344. And it is from a conviction of this that all the countries of Europe have subjected the Pope's authority to the civil power?

I believe that in every one there is a restraint, as Mr. Gladstone says, more or less.

345. Is not the difficulty of that being done in England very much caused by the fact of our having no diplomatic relations with Rome?

It may be so.

346. Earl of *Harrowby.*] But the mere fact of having diplomatic relations, unless those relations led to something in the shape of a Concordat, in which the Pope might consent to some restriction of his own authority, in compensation for something which he might gain, would give of itself no more means of dealing with the Pope than before, would it?

Some persons have proposed that, when they desired those titles, they should get the Queen's authority by a license, and that the license should be granted under certain conditions.

347. The

347. The whole question of the veto, or something of that kind?
Yes; that the titles should be held by the Queen's authority, and that the holders should take the oath of allegiance and get the license, and that that license should be under the condition of not enforcing any law not in accordance with the law of the land.

348. Do you think, from the present tone of the policy of the Court of Rome, that a concession of that kind is at all likely to be made?
I do not.

349. Earl of *Carnarvon.*] Do I understand you to say that the territorial designation of bishop or archbishop of a particular place carries with it, in your opinion, whatever may be the disclaimer, a temporal jurisdiction?
It does not *per se.* The name taken is not worth much squabbling about, if it stood by itself; but the name represents the territory. Wherever they plant their officers, that is in derogation of the rights of our Church; and they assert that they have a right to exclusive jurisdiction. That is the point. Then, if they take the territorial name, and if you recognise it, you encourage and abet the assertion of a claim which at the same time you deny to be lawful.

350. Would it relieve your objection, supposing the designation was not, "Bishop of a particular place," but "Bishop exercising authority in a place"?
What they say about being bound to violate the Act of Parliament, I think, is sheer nonsense. There is not a thing that is proper and necessary which they cannot do, by describing themselves quite consistently with the law; because a man might sign himself "Bishop of the Church of Rome, in the diocese of so and so." If the law was made very clear as to the constitutional position of this country, then, in connection with that, they should be recognised as bishops of the Church of Rome *in* their respective dioceses.

351. But assuming that the law was declared in some unmistakeable manner, you would not object to the designation of such a person as exercising authority in a particular place?
No; that is the way in which it is done in the case of the See of Jerusalem. The bishop there was consecrated as bishop of the United Church of England and Ireland in Jerusalem, under the Act of Parliament providing for the consecration of bishops for districts outside the Queen's territory.

352. Earl *Granville.*] You stated that although the Roman Catholics were now relieved from swearing that the Pope of Rome has no spiritual jurisdiction in this country, we continue to take the oath; is that the case, or to whom do you refer in saying "we"?
Down to the year 1866, Protestants took the oath; and the clergy of our Church are obliged to take it still; it is the Supremacy Oath; and after all, it is nothing but what is in the 37th Article; but the Act of 1866, which drops it, has a proviso to say that nothing therein contained shall weaken or affect the law for establishing the Queen's supremacy.

353. But we are relieved from taking that oath?
Certainly, but the law of the supremacy remains.

354. With regard to any restrictions placed by European Powers on the jurisdiction of the Pope, are not those almost in all cases matters of mutual arrangement; the sanction of the temporal power being given to his jurisdiction on the one hand, he accepting certain restrictions on that power on the other hand?
I do not think so in all cases, though it is generally so; there are some countries, I believe, in which it is not so. Your Lordship is better acquainted with that than I am; but I think that is not universal.

355. Earl of *Harrowby.*] In olden times the English barons would not allow the canon law to affect the law of marriage, I think?
Nolumus leges Angliæ mutari.

[The Witness is directed to withdraw.

Dr. JOHN THOMAS BALL, Q.C., LL.D, is called in; and Examined, as follows:

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356. *Chairman.*] WHAT is the office which you fill in Ireland?

I hold two offices. I am Vicar General of the province of Armagh, and I also am Queen's Advocate in the Admiralty in Ireland. There is no Queen's Advocate exactly with the same office as Sir Robert Phillimore did hold, and as Sir Travers Twiss now holds in England; but there is the office of Queen's Advocate in the Admiralty, and the person filling that office is usually consulted in everything relating to ecclesiastical and testamentary and maritime affairs for the Crown.

357. Have you had occasion to consider the operation of the Ecclesiastical Titles Act in Ireland?

I cannot say that there has been very much operation from it, except that there is a good deal of discontent on the part of the Roman Catholics at its existence.

358. But on that very point of operation, does it seem to you satisfactory that the law should impose certain penalties which in no case are enforced or sought to be enforced?

I think it is not; but I must say that I am entirely opposed to penal legislation. I consider that the second clause of the Act was in every respect a most injudicious enactment, and not at all calculated to serve the Established Church.

359. It produced at once great irritation amongst the Roman Catholics, did it not?

It did; it produced an irritation in which there was a great deal of personal and individual feeling involved, which made it worse.

360. In what way did that personal feeling become involved?

The Roman Catholic Bishops are jealous of the declaration against assumption of titles, and jealous of the titles not being accorded to them; and it has created an embarrassment in private society and in courts of justice as to allowing them the kind of titular dignity which they certainly, in common conversation, had before.

361. At the time of the passing of the Act, it is probable that the Protestant people in Ireland looked upon that Act with favour?

I do not think that in Ireland there was very much feeling about it, one way or the other, among the Protestants; I think among them at the time when it was passed there was no demand for it.

362. Is there now much anxiety for the retention of those penalties?

I cannot speak as to the general feeling; I can only express my own opinion as to its impolicy, and I will state presently the reason.

363. You think that it might have been more desirable if, in the year 1851, we had merely asserted the Queen's undoubted prerogative, and had not sought to enforce it by pecuniary or other penalties?

I do; but perhaps your Lordships will allow me to say that, in my judgment, the first clause enacted nothing new. My view of the law is that if that Act of Parliament had never been passed, and if the clause in the Emancipation Act, with a similar effect and intention, had never been introduced, by the law of England every line, syllable, and letter of the first clause of this Act is absolute and undoubted law.

364. Earl *Granville.*] Then, do I rightly understand you to consider that the first clause is useless, and that the second is injurious?

Precisely. I was just about to put it in that way. The view I take of the law is this; looking only to the Acts of Henry 8th declaring the Crown's supremacy, in particular the 26th of Henry 8, c. 1, in England, corresponding to the 28th Henry 8, c. 5, in Ireland, my opinion is, that from the time those statutes were passed (and they are declaratory Acts) by the law of England, any

any such documents as are described in the first section of this Act were absolutely null and void. To make this more certain, there is an Act of Henry 8th, the 28th of Henry 8, c. 16, which was repealed by Philip and Mary, and was revived by the 1st Elizabeth, c. 1, which is absolute and express as to the nullity of those bulls, briefs, and rescripts. The law I take to be exactly the same in England and Ireland, because the 28th of Henry 8, c. 5, Irish, is precisely the same as the 26th of Henry 8, c. 1, English, that is, as to the supremacy of the Sovereign; and, supposing that a clause of a declaratory Act in England were omitted in an Irish Act, in my opinion the Irish Courts would still be bound to construe the law according to the English Act, because the English Parliament, having declared the common law by that Act, and not created a new right or a new enactment, that would operate in the courts in Ireland to determine what was the rule of the common law. Therefore I take it that, as regards the law in England and Ireland, even though there might be some variance of the words in some of the statutes on this subject in each country, the same principle would apply in both; and that from the reign of Henry 8 the proposition affirmed in the first clause of the Ecclesiastical Titles Assumption Act is absolute and undoubted law.

365. Earl of *Harrowby*.] But not only from that time, but from previous times?

Certainly. Taking the statutes as declaratory Acts.

366. Was that equally true in regard to ecclesiastical courts as in regard to courts of common law?

Certainly. I have avoided going into a historical review of the law as to the authority of the Pope prior to the Reformation, because that would raise the question whether the statute of Henry 8 does truly represent the law prior to it; I am not at liberty to question that it does. When once that statute was passed by Parliament, it was a final declaration of the common law, and it is not open to any lawyer to question whether it gives a true declaration of it.

367. That bears upon the ecclesiastical courts as well as upon the courts of common law?

Absolutely; because there are acts to declare that those courts are under the Crown's control, and not under the Pope's.

368. Supposing that those Acts of Henry 8 were repealed, what would be the result?

I do not think that it would alter the law, unless in repealing them you also declared that it was an erroneous statement of law, because it was an affirmative declaration of law, which you will only get rid of by a counter negative declaration.

369. *Lord Privy Seal*.] Then, you consider the Ecclesiastical Titles Act to be surplusage?

As to the first clause, I do consider it so.

370. If it is surplusage, it amounts to nothing more than what the law was before?

That is all.

371. Then why should the Roman Catholics be more annoyed at what was mere repetition than they were at the state of things before this Act was passed?

I must say for myself that I think the Roman Catholics have raised and suggested many matters as grievances in connection with this law, which I do not consider as grievances; I am not here to explain why they view a thing in a particular light, because my own judgment is that a great deal of their feeling about it, and their opposition to it, has not a solid basis to stand upon; but the fact that they are discontented is a fact which I have to meet, and the fact of that discontent obliges me to see if I cannot, in some manner or other, adopt such a course as would conciliate them, and remove that discontent, and I believe that the repeal of the second clause of this Act ought to effect that object.

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372. Duke of *Somerset.*] I understand you to say that first of all the repeal of this Act would make no difference at all with regard to the law?

That is the first clause.

373. Then, do I understand you to say that you think it desirable or that you think it undesirable to allow the Roman Catholic prelates to assume the titles?

If your Grace will allow me, I will answer that on the second clause, because the first clause, in my opinion, does not make the taking of the title criminal.

374. *Chairman.*] Will you now explain, in detail, your objection to the second clause?

My objections to the second clause are these: at the time that that clause was passed, titles were from courtesy often accorded, in conversation, to Roman Catholic prelates; you would speak of the Roman Catholic Archbishop of Dublin, and from courtesy I myself, in examining a Roman Catholic bishop in testamentary cases, in which I am very much concerned, would, from courtesy, say to him, "My lord;" but all that, as every one understood while doing it, was a titular dignity without any reality. In fact, the position of a Roman Catholic prelate was exactly similar to the position of some persons in Ireland who are descendants of gentlemen on whom James the 2nd conferred peerages after his abdication: I will name two, I have often heard their names, Lord Galmoy and Lord Riverston; neither of them have real peerages; still in courtesy, in conversation, I have known them to be described and called as Lord Galmoy and Lord Riverston; every person in doing that, assumed and took for granted that you understood that there was no reality in it beyond courtesy. When this Act came out, it appeared as it were to be aimed at that courtesy (I am speaking now of the feeling in Ireland), to be aimed at what did not offend: in that way, I think that the second section, by making that declaration at that time, created ill-feeling and was injudicious. The second matter I object to in the section, is the mode of enforcing it; what can be conceived less dignified and less worthy of the assertion of a great constitutional principle than to hand it over to a common informer? The breach of this Act is put precisely on a level with a breach of the Bribery Act, or a breach of the Act by a Poor Law Guardian as to taking a contract. The mode is by a common informer bringing an action for the sum of 100 *l.*; you put this matter of grave importance, for it it is of any importance at all, it is of the gravest importance, touching the dignity and authority of the Crown of England on a level with offences of the characters which I have mentioned; I think that is objectionable; I also think it highly calculated to offend the susceptibilities of the Roman Catholics to place breaches of this Act in the same category with offences of the characters which I have described.

375. Duke of *Somerset.*] The second clause to which you have referred, says that it must be with the consent of Her Majesty's Attorney Generals in England and Ireland?

No doubt; but in court nobody would appear but a common informer, with his action before the jury, and he might be a most obscure person; if it is a proper thing to vindicate the law, why is it not vindicated by the recognised officer of the Crown for that purpose.

376. Would the informer be heard if he came without the consent of Her Majesty's Attorney General?

It would not appear upon the record whether he appeared without consent or not, but the action would be stopped on a motion unless you showed the Attorney General's consent. There are other proceedings which require the Attorney General's consent. If you proceed under Sir Samuel Romilly's Act in chancery in charitable cases, you must have the Attorney General's consent to your petition; but the petition is not in the name of the Attorney General.

377. *Lord Archbishop of York.*] You are then of opinion that the simple repeal of the second clause would remove that irritation which you know to exist?

I think it ought to do so. I cannot answer for the Roman Catholic clergy or prelates. My idea is that they have greatly exaggerated, as I have said already, any grievance arising from the law.

378. Duke of *Somerset.*] Returning to the question whether it is desirable or undesirable to allow the Roman Catholic prelates to assume the titles which they have claimed, what is your opinion upon that point?
I would leave it without taking notice of it.

379. You would leave it perfectly vague?
I would leave it as it stood before the statute.

380. Of course when a law has been passed, the repeal of that law would have upon the public mind a different effect from the state in which the law was before the enactment was passed?
That is only a matter of feeling. It would not vary the law if the other statutes were left existing; but that objection, if it is an objection, might be got over by repealing the second clause and retaining the first, or by a proper preamble.

381. Earl of *Carnarvon.*] The first clause, as I understand, in your opinion, would carry no penalty with it, if it stood by itself?
No.

382. *Lord Archbishop of York.*] The question has been raised in this Committee whether a breach of the first clause would be a misdemeanor; have you formed any opinion upon that?
I think that there would be extreme difficulty in conducting a prosecution or framing an indictment founded upon it; but I would not give a positive opinion without more consideration. I am under the impression that there is some declaration in one of Henry the 8th's Acts, which might carry the law much farther than that first clause.

383. Earl of *Carnarvon.*] But if it should appear that a charge for misdemeanor was possible under that first clause, of course a penalty would be carried with it?
Every misdemeanor would involve some punishment, but not of the same character as a penalty. That would be a criminal offence. I confess I doubt very much if there could be a prosecution on the first clause in a criminal court.

384. *Lord Archbishop of York.*] Then, as a practical matter, there need be little apprehension that there would be any use of the first clause in a criminal proceeding; is that your opinion?
Yes.

385. Earl of *Harrowby.*] It would have the effect of disqualifying the production as authority of any document of the nature described before a court of justice?
That is another matter. I cannot conceive any way in which the question of the authority of any ecclesiastical document from Rome, as long as the Roman Catholic Church is not recognised by the State as an organised body with inherent power and vitality in existence by itself, would arise in a court.

386. But supposing there were a question of dispute between two ecclesiastics of the Roman Catholic Church, what then?
That could not come into a court of law.

387. Are there no temporalities connected with it?
No.

388. Are there no manses; is there no power of access to a certain chapel, for instance?
That would be with the parish priest, but the parish priest is not within that Act.

389. Would not the parish priest be apt to quote his appointment by some ecclesiastical authority?
That appointment would be looked at, and I do not think that clause would prevent its being received to show he had been appointed, although not to prove legal rights. Besides I think a parish priest could prove in a court of law, even without a document, that he was acting in that character.

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390. Lord *Somerhill.*] Could you in a court of common law prove that he was appointed by competent authority?

That clause does not go at all to the case of a parish priest.

391. Not directly, but would it not in this case possibly do so? Such things have occurred as a parish priest being suspended as being contumacious, and where he is a popular priest he has had a part of the congregation with him, even to the extent of nailing up the chapel door and occasioning scandalous scenes; you may have heard of such cases?

I was counsel myself in a case as to the right to a pew in a Roman Chapel, and in that case I entertained no doubt whatever that no religious status could be looked to at all; the chapel simply must be viewed as the property of the persons in whom the legal estate was vested, and the court could not go into any rules of a religious or ecclesiastical character connected with it.

392. *Lord Archbishop of York.*] I understand you to say that you would overlook the use of the titles from the time that this clause was repealed?

Yes.

393. It has, however, been stated that those titles imply and go with a jurisdiction?

It is a voluntary jurisdiction; it is a jurisdiction which everybody knows has no mode of enforcing itself; it could not be recognised in a court of law, and for every purpose of law it is an absolute nullity.

394. But it is a jurisdiction against which other powers have felt it necessary to protect themselves, is it not?

If this country were a Roman Catholic country, it would, in my opinion, be far more necessary to protect yourselves, because the moment you recognise the Roman Catholic religion as in any way connected with the State, you must rigidly and accurately define the limits and boundaries between Church and State. If you do not recognise the Roman Catholic religion, but treat it in the same way as you do any other nonconforming body, you have nothing to do with their laws, or with their system, except when some tangible right of property happens to arise, which must be determined not by their laws, but by the law of England as to property, and by whatever are the legal rights of the persons representing that property apparently to the public.

395. *Lord Bishop of London.*] Then, you think that the first clause of the Act and the law of Henry VIII. and the law which that recapitulates, is all useless?

I think that the first clause in the Assumption of Titles Act is not necessary.

396. But is not what you have said now, that you consider that there is no necessity for protecting ourselves against the jurisdiction of the Pope?

Not that there is no necessity for protecting ourselves against it by declaration that the Acts are null and void; but that there is no necessity for protecting ourselves by making it penal to assume an invalid title.

397. May we assume that you think it is dangerous to allow the jurisdiction of the Pope?

I would not alter the law. We have asserted the royal supremacy, and it is part of the constitution of England.

398. *Chairman.*] As Vicar General of the Province of Armagh, you must have been able to form a valuable opinion upon this point; in general, in your judgment, does the existence of this Act afford any security or safeguard of any description to any of our Protestant settlements or institutions?

I am of opinion that it does not, but that on the contrary, by creating on the part of many a jealous feeling, it is injurious. Our policy is to conciliate the Roman Catholics.

399. *Lord Bishop of London.*] Does not that apply to the first clause as well as to the second?

I think not. It is not penal, in my opinion, under the first clause to take those titles. That clause is a mere declaration of the law of England, which has been repeated over and over since the Reformation; that the supreme ecclesiastical

ecclesiastical authority is in the Sovereign, and nowhere else. There is nothing, in my opinion, offensive in that.

400. *Chairman.*] At the same time, while in your judgment those penalties afford no security to any Protestant institution, they, as a matter of fact, have irritated and inflamed, to a very great extent, the Roman Catholic population?

That is my opinion; and I do not confine my observation to Roman Catholic ecclesiastics. I am very well aware of the feeling of the Roman Catholic judges and the Roman Catholic bar, with whom I am extremely intimate; and I believe that their feeling is as strong as that of the ecclesiastics against the second clause.

401. *Lord Bishop of London.*] But do not the Roman Catholic authorities hold that the Pope has jurisdiction, and the right of conferring jurisdiction, in England?

I believe they do.

402. Therefore, they hold what is contrary to the law as it existed prior to this statute?

I am under the impression that they hold that the Pope has only a spiritual jurisdiction; at least, I am quite certain that that is the view taken by intelligent Roman Catholic laymen in Ireland.

403. But do they not hold that he has that which you say the law of England declares that he has not?

For purposes of a legal character he has it not; but he may have it by voluntary admission of persons as individuals; and I see no harm in that.

404. Why do you think that it would be desirable, then, to retain a law which says that he has it not?

Because it is necessary to make the declaration with a view to declaring the exact *status* of the Crown of England with regard to ecclesiastical affairs.

405. Then, is not the declaration of *status* the very grievance of which the Roman Catholics complain?

No; I think it is the penalties, and the being forbidden to use the titles which, through courtesy, they have been accustomed to in Ireland. I do not speak about England at all. I am not acquainted with the feelings of the English.

406. *Lord Archbishop of York.*] Then, you would disregard this claim on the part of the Roman Catholic bishops to be the only bishops?

I would totally disregard it.

407. Are you able to make a sharp distinction between spiritual and temporal jurisdiction; is not that rather difficult?

I would call it spiritual jurisdiction to say that a particular individual was to be bishop. It is spiritual jurisdiction for the bishop to say that such a man is to have the cure of souls in such a place; but when you come to money and property, then you come to temporalities. The Roman Catholic Church in Ireland, as a Church, subsists upon voluntary contributions, freely offered.

408. *Lord Bishop of London.*] Do Roman Catholic bishops hold, or profess to hold, any courts?

Not that I ever heard; and I am quite certain that there is none over the laity. But if an ecclesiastic is guilty of any offence, he submits voluntarily to the jurisdiction of his ecclesiastical superior, and there is an appeal to Rome, because I have known the appeal taken to Rome and decided there; but all that is by voluntary submission. It is a right which is incapable of being enforced, and it does us no harm if they choose voluntarily on the one hand to concede the right, and on the other hand to assert it, among themselves.

409. We had it stated a short time ago, that instructions were sent to the Roman Catholic clergy with regard to the succession of property as a point to be discussed by them, and that the clergy were instructed as to what they were to teach the people about the succession of property; if a clergyman acted contrary to what the Pope and the bishop had settled in that matter, would he not be guilty of an ecclesiastical offence?

 I cannot

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I cannot answer about that voluntary arrangement among themselves; but it is plain that it would not be an offence cognizable, tangible, or capable of being recognized in any court.

410. But does not that illustrate the great confusion which exists as to the limits of this spiritual jurisdiction?

No one can deny that it is among the *arcana imperii*. If you proceed to give full definitions of what the Queen's supremacy is, I venture to say that you will find it very difficult. It is one of those matters in which the line of demarcation is very faint, and which you are perpetually crossing over; but it is quite sufficiently laid down by the law of England, in my opinion, without entering into those minute and nice distinctions which, whenever they do arise, will unquestionably give very great difficulty to the judges who have to decide and adjudicate upon them.

411. Would not a difficulty arise in this way, if the ecclesiastical authorities, in virtue of their jurisdiction, taught one law about marriage, and the law of the land laid down another?

The law of the land would totally disregard their teaching; the rights and *status* of children of families would be decided irrespective of their teaching; at this moment the law of Ireland about a Roman Catholic marriage is in direct contradiction to the law of the Council of Trent. In my opinion a marriage celebrated in Ireland by a Roman Catholic clergyman between two Roman Catholics is valid, although it be at any hour of the night, without the slightest previous notice, with every conceivable irregularity, and without another witness than the Roman Catholic clergyman himself. By the Council of Trent, there should be two witnesses, and otherwise, I believe, certain safeguards are introduced. By the law of the land those safeguards are matters of discipline, but are not essential to the constitution of the marriage, which must be regarded as if the Council of Trent never had sat; because you must take the common law as regards a Roman Catholic marriage as it stood in England prior to the Council of Trent. I mention that as an instance where, in the case of Roman Catholic subjects and Roman Catholic marriages, the law of England is clear and distinct in asserting its own doctrine that a marriage is good, and yet the law of the Church expressly forbids the marriage to be celebrated in that manner.

412. Lord *Colchester*.] Is not the social effect of that to make the spiritual jurisdiction coercive?

Such spiritual jurisdiction derives its efficacy only from the belief and willingness to submit of the individual against whom it is directed; it deprives him neither of goods, property, nor social rights. If an individual is influenced by it, it is from the conviction of his own mind, and you can no more operate upon that than upon any other phase of belief which the human mind may choose to adopt.

413. But may not the opinions of third parties, such as a man's neighbours, give the alleged jurisdiction a force which it may not have upon his own conscience?

That you cannot deal with by law.

414 Earl of *Harrowby*.] In regard to marriage, would a Roman Catholic priest feel himself at liberty to marry a person who had been only married in this way contrary to the directions of the Council of Trent?

No; I am not speaking now of what practically occurs. I am speaking of what is law; but, practically, it scarcely ever happens that such a marriage takes place, because the Roman Catholic clergy obey the discipline as a fact; but there have been occasional instances.

415. Lord *Somerhill*.] There used to be priests called "Couple Beggars," used there not?

Yes; what made those marriages valid was because we applied to them the old common law.

[The Witness is directed to withdraw.

Mr. WILLIAM GERNON, is re-called; and further Examined, as follows:

416. *Chairman.*] I GATHER from a letter which you have addressed to me, that when you were last before this Committee there was one point upon which you had wished to make some observations, but which escaped your memory at the moment; and in that letter you also state that this point referred to the designations to which archbishops and bishops of the Roman Catholic Church are entitled, when communicated with officially. Will you have the goodness to state what it is that you desire to lay before the Committee on that point?

It arose in this way: Some few years ago I presented an official report to my Board, at a time when there were as members of it, his Grace the late Archbishop of Armagh and Bishop Denvir, the Roman Catholic bishop. I commenced that official report with the words "My Lords and Gentlemen." The Chairman interrupted me, and said, "Who are 'my Lords' at this Board?"

417. Who was the chairman at that meeting?

I think it was the present Judge of the Court of Probate in Ireland, but I am not quite sure who was in the chair: he said, "Before you go any farther, who are 'My Lords' at this Board?" I said, "I think, Sir, the Archbishop of Armagh and Bishop Denvir." He said, "I do not think Bishop Denvir is entitled to be officially addressed as 'My Lord.'" I answered, "With great respect, Sir, I think that the minutes of the Board have uniformly treated him as such, and that the royal warrant originally appointing him has also treated him as such." One of the Roman Catholic Commissioners present at that meeting then took up a copy of the Act of Parliament, which was bound by the Queen's bookbinder for the use of each member of the Board, and he handed it playfully to the chairman, and said, "The Queen's printer has these words 'The Right Reverend Lord Bishop Cornelius Denvir;' after that I presume you will have no objection to have him designated as 'My Lord.'" The Chairman then did not further press his objection, and the report remained officially as it was, with the words "My Lords and Gentlemen." Since that occasion I may say that I have uniformly addressed Roman Catholic Archbishops and Bishops in my official communications, as "My Lord." I am aware that there are public departments in Ireland (I believe the Chief Secretary's office is one, and I rather think the Poor Law Board also is another) in which they are designated in correspondence as "Right Reverend Sir;" but having regard to the fact that Her Majesty's warrant, which I mentioned to your Lordships upon the day that I had the honour of appearing before your Lordships before, describes the Archbishops as "Our right trusty and well-beloved the Most Reverend Archbishop William Crolly, and the Most Reverend Archbishop Daniel Murray"; and when it comes to speak of the Bishop, it describes him as "Our trusty and well-beloved the Right Reverend Bishop Cornelius Denvir;" I think that the designation of "Right Reverend Sir" is not a proper or correct designation. Upon the first meeting of the Board, held on the 9th January 1845, at which the late Lord Chancellor of Ireland, Mr. Blackburn, who was then Master of the Rolls, and first Chairman of the Board, was present, the members were described in this way: "Members present: The Right Honourable the Master of the Rolls in the Chair: The Right Honourable the Lord Chief Baron; The Right Honourable the Judge of the Prerogative Court; His Grace the Lord Archbishop of Dublin; His Grace the Lord Archbishop William Crolly; His Grace the Lord Archbishop Daniel Murray; The Right Honourable the Earl of Donoughmore, K.S.P.; the Honourable and Very Reverend the Dean of St. Patrick's; The Right Honourable Anthony Richard Blake; The Reverend Dr. Pooley Shuldam Henry." Since the date of my appointment I have followed the practice of addressing the Archbishops and Bishops of the Roman Catholic Church, as "Your Grace" and "My Lord."

418. *Lord Archbishop of York.*] Then you have not withheld the title by reason of the Ecclesiastical Titles Act?

No; the practice has, I may say, been uniform at my Board.

419. I think you stated that your Board administered under what is called the Charitable Donations and Bequests Act in Ireland?

Under the 7th and 8th of Her present Majesty, chapter 97; there was an

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Act passed last Session, but it merely supplements and increases the powers of the Board.

420. Did you come here to show the inconveniences attaching to that Act from the Ecclesiastical Titles Act?

Yes.

421. But are you aware that the 4th clause of the Ecclesiastical Titles Act exempts that particular Act under which you administer from its own operation?

It exempts it in terms, but I do not exactly see how, if a bishop of the Roman Catholic Church was described by his territorial title, that saving clause would have any effect.

[The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, One o'clock.

Die Martis, 5° Maii 1868.

LORDS PRESENT:

Lord Archbishop of York.
Lord Privy Seal.
Duke of Somerset.
Earl Stanhope.
Earl of Carnarvon.
Earl of Harrowby.
Earl Granville.
Lord Bishop of London.
Lord Bishop of Oxford.
Lord Redesdale.
Lord Colchester.
Lord Somerhill.
Lord Lyveden.

The Earl Stanhope, in the Chair.

The Right Reverend Bishop GRANT, D.D., is called in; and Examined, as follows:

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422. *Chairman.*] As Bishop of the Roman Catholic Church, you exercise, if I mistake not, your spiritual functions in the district of Southwark?
I do.

423. May I ask how long you have been a Bishop in that district?
Since July 1851.

424. Since the same year, therefore, as the Ecclesiastical Titles Act was passed?
Yes.

425. May I ask where you were during the passing of that Act?
I was in Rome during the greatest part of the Session. I came to England in September 1851, so that I think that the Act must have been passed before my arrival.

426. You arrived then subsequently to the passing of the Act?
Yes, but I was Bishop before that; I remained in Rome some little time after consecration.

427. You remember the brief of Pope Pius IX., which for the first time established dioceses in England?
Yes.

428. It has been stated to this Committee that, as would appear from that brief, one of its objects was to avoid any infringement of the Act of 1829 by providing that the titles borne by the newly-appointed Roman Catholic prelates should not clash with any titles borne at that time or now by prelates of the Established Church; would that be your opinion?
When the petitions which led to it were presented in 1848, I was with the Bishop of Birmingham in Rome, when he produced an extract from Mr. Anstey's book on the penal laws, stating that by the Act of 1829 new titles would not be illegal. The extract to which I refer is as follows: "This enactment (Emancipation Act of 1829) is confined to cases of assumption or user by the prelates themselves; there is nothing to prevent their being so styled by others, or even addressed. Even in a clear case, it will be often difficult to sustain the charge of assuming or using the name, style, or title in question. Nothing short of the literal expression 'Archbishop' or 'Bishop,' or 'Dean,' with the true addition of the locality (as 'York,' &c.) would seem to justify that jealous dis-

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trust with which the Courts regard new penal enactments." Cardinal Barnabo, who had principally to attend to all the details for the consideration of the other cardinals, said: "We have always stood back and hesitated until this extract was produced, which shows that without touching the English law new titles could be given."

429. It is remarked, however, in a work which Sir Travers Twiss published at the time, that it appears that a departure from that general rule was intended in the brief, inasmuch as one of the prelate's sees then formed was to bear the title of the Bishopric of St. David's and Newport, St. David's, as I need not remind you, being one of the sees of the English Church?

The preparatory work of getting the brief ready naturally occupied a long time, and the last hands through which it was passed were those of Cardinal Vizzardelli, who was considered one of the first Latinists and canonists of that time; and I remember his distinctly stating to me that the two names were united together, in order to avoid touching the law of 1829. Newport is put with Menevia, on purpose to avoid touching the law.

430. Who is the present Roman Catholic Bishop in the district of Newport? Dr. Thomas Brown.

431. Can you inform the Committee whether, when he is addressed by any of those who are in communion with him, or when he takes any appellation to himself, he takes the title of Bishop of Newport, or of Bishop of St. David's?

In all ordinary conversation he is always called the Bishop of Newport. Officially, he would take the two titles, but he has always taken St. David's in the Latin form of Menevia.

432. The object of that course being, to conform to the Act of 1829?

The distinct object, in putting the two together, was to keep within the terms of the law as explained in Mr. Anstey's book; viz., that it would not be in any way against the law to take titles which were not existing titles.

433. Since the passing of that Act, have you had occasion to observe any inconvenience arising from it, in the case, for instance, of Roman Catholic bequests or in any other business with which you may have had to deal?

It has only been in existence now since the year 1851, and the cases of testators who have made wills for Catholic purposes since then, and who have died, have naturally been as yet rare; but I have known three cases in which the title was used, in which it was necessary to get it changed beforehand. The testator said, "I intend to make my will in such a form," and we said, "Do not do that, because that will frustrate the purpose of it." But if anybody happened not to take the advice of counsel before he made his will, and made his will in that title, we have been always told that the court could not enforce payment. If any executor said, "I am ordered to pay certain money to the Bishop of Newport," the Bishop of Newport would have no means of compelling payment, and the court would not enforce it. I am now alluding to the practice with Catholics of leaving in the name of their Bishop (his title alone being given) bequests intended for schools or other purposes of charity.

434. Then, in point of fact, there would be no inconvenience, would there, provided due caution were used?

Yes; there would be always this inconvenience: that testators, as a rule, keep their intentions secret, and then when at last their wills come out, it is too late to ask them to identify the person; and trusts will thereby be frustrated which they really intended, and which they quite naturally expected would be administered by those whom all through their life they had been accustomed to call their Archbishop or Bishop; the testator says, "I wish this to be administered by our Bishop," and then when the testator is dead there is no further chance of rectifying it.

435. *Lord Archbishop of York.*] But if the name of the person holding the title also were added, the bequest would go to the proper quarter, would it not?

It is for the Courts to say whether, by adding the title, you have not brought in the territorial quality which the law disallows. It would always expose us to a law-suit if any body said that the principal idea in the testator's mind was the ecclesiastical quality rather than the individual identity.

436. Lord

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436. Lord *Lyveden.*] Are there not a number of persons who make their own wills?

Yes; a good many.

437. Would not they naturally leave property to the title rather than to the individual?

They would leave it to the title without thinking of the testamentary disability arising from the Act of 1851.

438. And that would be void, would it not?

That would be void.

439. *Chairman.*] Would there not also be this further case; we might suppose that, very naturally, a Roman Catholic testator feeling confidence, not only in the prelate who is now exercising episcopal functions at Birmingham, but feeling confidence also in any successor appointed by what he considered the right authority to appoint to that function, might therefore wish to make his bequest, not to the actual prelate by name, but to any person who, in his judgment, was filling that see?

Yes, it is constantly the case, so that only the other day, where a priest had been in a very poor place, and he said: "Well, I can manage to live here, but I see no means of providing for a successor, except by leaving my own money to you to take care of." Of course he did not designate me in my own individual capacity, but the Bishop for the time being was to protect the money for the priest who should succeed him; and as he proposed to use my official name, his act would have been void.

440. Has such a case yet arisen in any of the Courts of Law in England?

I do not recollect any case arising upon the title being used; but I asked about it, and I was told that if it were used the Courts would not enforce payment of the bequest.

441. And the bequest would become void?

If it were land, it would go, I suppose, to the heir-at-law; and if it were personalty, it would go to the residuary legatee, unless the testator specially provided otherwise for either description of property.

442. May I ask what observation you have made as to the effect of the Ecclesiastical Titles Act upon the feelings of the Roman Catholics in England?

It has been a constant source of annoyance and trouble; and what made the feeling stronger was this: that until the year 1829, although there had been very severe penal laws passed in olden times, there never was any law against Bishops as such, and it was never made penal. A priest, as your Lordships well know, could be tried for being a priest, and for saying mass, and there were all kinds of penalties in every form against priests; but there were none against Bishops. Then, when the Act of Emancipation came, it did not come as punishing a new crime; yet it, so to speak, invented the crime, because no one supposed that anything had been done to provoke it; and in giving emancipation, which affected the civil rights of Catholics, it appeared to be very unnecessary to add this clause. Then afterwards, again, when pains were taken not to infringe the Act of 1829 in the English case, it was felt to be the greater grievance that the Titles Bill should be brought in. It has always been spoken of as an annoyance of which we cannot tell the extent, because until some law suit arises which compels the courts to work out the full meaning of the Act nobody can tell the injury that it may do, or the effect that it may have.

443. Has it been a source of great irritation in the minds of Roman Catholics, so far as your observation has extended?

Of late years we have tried to avoid every subject of irritation since the political excitement has been so great in Ireland, and in other ways; but whenever it is spoken of it is spoken of as a grievance, and as a thing that we were pained at, and which we were sorry to find had been done. It was always spoken of in that way, but naturally, ever since this late political excitement has arisen, everything which has been personal we have tried to forget, in order to do as much good as we could in calming the minds of our people who were otherwise excited.

444. In your judgment, has the annoyance felt by the Roman Catholics in England been aggravated by the consideration of the different treatment to which

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which the Bishops of the Episcopal body in Scotland are subjected, inasmuch as the principle of the Ecclesiastical Titles Act being to deny titles to those who have not received those titles from the Queen's authority, there is a special clause in that Act to exempt the Bishops of the Protestant Episcopal body in Scotland from its operation?

It naturally might. I could not say that I have ever heard it discussed in that way; because we have looked at the more direct and immediate annoyance which arose in the Act itself.

445. Have you formed any opinion in what manner, supposing the Legislature were to repeal or alter those Acts, it might be proper to address officially the Roman Catholic prelates in Ireland, where the titles are not different, as in England, but the same. In the case of Dublin, for instance, there being there an Archbishop of Dublin of the Established Church, and also a prelate of the Roman Catholic Church holding the same rank and claiming the same title, has it occurred to you in what manner it might be advantageous to address the latter?

What strikes me about it is this: that the Legislature has accepted the difficulty, because it left it free to everyone in the United Kingdom to use the title except the man himself, by both the Act of 1829 and that of 1851; so that the Legislature has never looked for any solution of the difficulty, but they have trusted to the common acceptation of society, and they have trusted to people knowing whom they were addressing. Those who were friends would address us in one way, and those who were enemies would obviously avoid it; but as no Act of Parliament has ever required us to find another denomination, except when speaking of ourselves, the Legislature seems to have supposed that it will right itself like any other difficulty. There may be two Members of Parliament, for instance, for any borough, but there is always some way of distinguishing one from another. The Act of Parliament has never, as your Lordship notices, found that that would be a serious question, otherwise it would have said that no one else should use the title.

446. My question was rather to the point, whether you had formed any opinion as to how it might be expedient, in any new legislation on this subject, to designate the Roman Catholic Bishop exercising functions in any diocese?

I consider it would be better to leave things as they were before the year 1829, and not to try to find a title, for this reason, that if the Legislature chooses a title then it would be necessary always to use it, and it is very hard to persuade ordinary people, in deeds and wills and other acts, always to use that name; and therefore I have thought it would be always safer to leave it just as it was before 1829, and to suppose that the right name will be used. I have never thought that there would be any way by which it could be done without perhaps causing fresh annoyance, and without also bringing in legal difficulty. Whenever the law chooses a name it insists upon that name, and that might very often frustrate very good and laudable intentions, because people might not always know that they were obliged to use that form of expression.

447. But would not that bring us back to the difficulty which you began by stating; supposing that a testator, who might be perhaps not a very accomplished man, wished to keep his bequests secret, he might then say, "I will leave the property to the Archbishop of Dublin," having all the while the Archbishop of his own faith in view; and if the law were left in the state in which it would be left by merely repealing the two Acts that bear upon this question, what would become of that bequest?

We have been in Ireland in this state of things now for a very long time, and under very disadvantageous penal laws, and yet I do not think any cases have ever come before the courts where the identity has been disputed. I think I have read of only one such case; but I suppose the court of equity would at once seek who the testator was, and what were the different charities he had assisted in life, and what was his particular form of belief, and that they would then administer accordingly. The difficulty was much greater in the year 1829 than it became afterwards in the year 1832; and this through the Church Temporalities Act reducing the number of Protestant prelates; but still I do not think that the difficulty ever did arise in practice. I think I have read of one case, and that is all.

448. Lord

448. Lord *Somerhill.*] Was that a case of identity of a Bishop, or of any of the inferior clergy?

I think it was the Bishop. It is some time ago since I read it, and I do not remember it ever arising in ordinary practice.

449. Has any case occurred to your knowledge, either in your own diocese or in others, where there has been a doubt about the person entitled to the designation of parish priest, which, naturally, the Bishop of the diocese would be probably called upon to decide?

In England we have no parishes; it is always a state of mission, as we call it; so that the case has never arisen. The difficulty might be more likely to arise in this way; that supposing a priest was in possession, and wanted to retain possession against the trustees, then it might be necessary to go to the Bishop of the diocese to say whether that priest was canonically the person who ought to be in that particular place. Supposing I intimated to any priest that he was no longer qualified, and that he ought to leave a certain mission, and he chose to stand on his strict civil rights and defy the trustees, the trustees would of course have to come to me for a certificate if he was the proper person. There was a form adopted by the Colonial Office some years ago as to Bishoprics in the Colonies, as it was necessary to have some one in London who could certify that *A. B.* was the proper person to receive certain payments, and then the payments were made to him, and such certificate was taken as being sufficient.

450. If such a case arose in England (as it might in your own or any other diocese) the Bishop deciding that would have probably to be recognised by the courts of law in this country as the best authority, would he not?

Yes, it should be so, but the difficulty would be this: that he would destroy his existence the moment he pleaded it; because, the moment I say to the court "I am the Bishop of this diocese," they say, "We cannot recognise you." It happened that, some years ago, in a civil case, I was a witness before the late Lord Campbell, and the examining counsel said to me, "You are a Catholic Bishop," and I said, "Yes." Lord Campbell said, "I will not trouble you to mention the see." He purposely avoided it, and the Attorney General said, "Yes, I am here; I am on the look-out."

451. It would be more difficult to avoid mentioning it in such a case as you have described, would it not, because it would be according to your authority in that diocese that you would have to certify or produce the certificate?

It would be so. I should have to plead the quality in order to make my evidence worth anything in the way of assisting the deliberation of the court.

452. I hope the case has not arisen in England, but you may have heard that there have been in Ireland occasionally refractory priests, who, under suspension, have contested the authority of a Bishop?

Yes; and if they refuse to go away the Bishop would have to plead his ecclesiastical quality.

453. In that case the Bishop would have to enforce the rights of the parishioners to their chapel, and to the ministrations of a more suitable clergyman, by exercising his authority as Bishop of a particular diocese, would he not?

Yes; that would be the only quality in which his evidence would be of value to the court.

454. If he could not do so, the other priest, if he had sufficient physical force to assist him, could retain possession of the chapel, I apprehend?

Yes.

455. Practically, it may be within your general knowledge that some such cases have arisen, although not very lately, I believe, in Ireland?

I know there have been several cases of that kind.

456. *Chairman.*] Perhaps you will have the kindness to explain how it is that the system of parishes is not applied in England, since, as we understand, territorial jurisdiction is ascribed to each prelate, which one would have thought would have extended over a certain number of parochial limits?

It is more an ecclesiastical than a legal difference; that is to say, every priest has

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has a certain district assigned to him, in order that he may be responsible for the sick and the poor within that district, and the only difference is that we have never yet been able to give them the name of parish priest. The same state of things exists in the United States, where also there are no parish priests.

457. *Lord Archbishop of York.*] That is to say, the territorial divisions have not been completely carried out?

The territorial division is there, but there is not the fixity of tenure in the incumbent.

458. If I am not mistaken, priests in this country are divided into two classes; there are certain "missionary rectors," are there not?

Yes.

459. Those have a more fixed tenure, have they not?

They cannot be removed without a proper trial; it is not a regular trial, such as the English law prohibits, but there must be a distinct fault proved against them; but with regard to the others, if the Bishop thinks that *A.* would be more useful at Margate than at Ramsgate, he says, "Go to Margate," and then the priest goes there.

460. You stated that there might be a confusion if Parliament sought out one title for prelates in communion with the See of Rome, inasmuch as testators might not know what the exact title was, and might use a wrong one; but does not the difficulty stand here; a person is called Bishop of Newport; if I understand it rightly, that means, according to the sense put upon it by more than one witness, the only Bishop having the right of jurisdiction over all souls within a given district?

This is the way in which it strikes me; that if Parliament says, "We will not interfere; we will not ask you to define yourselves in any way whatever," then, of course, each testator will choose a designation that he thinks will fit its object. But supposing that Parliament were to define a special title, and say that those who are in communion with the See of Rome must always use that title, then I say that it would not simply define the person, but it might possibly, by a construction of law, compel the use of that word and no other; so that if you did not use that word the person would not be designated at all.

461. Supposing, however, for the sake of argument, that under the title of "Bishop of Newport" a claim is implied to the sole episcopal jurisdiction over all the souls within a given district, and, supposing that the Legislature did not desire to concede so much, might it not be desirable, in allowing the title of "Bishop of Newport" to be used, to have, in an Act of Parliament, a definition of it which should stop short of that full theoretical definition?

I may mention, in illustration of what I was saying before, that the question of title is one which affects each one of the peers. The only designation that the law will admit for a peer is his right one; and not only would it be of course disrespectful to give him any other title, but he would not be considered as properly designated if he were addressed by any other title. If in a will any one of your lordships were called by his Christian name and his surname, then the law would say, "We do not know who that is." That would be the inconvenience of creating a definite title for us. But coming back to your Grace's question, if the law were to make that distinction, and to say, the Bishop of Newport shall be the Bishop of Newport with a qualification, then there would be this difficulty; that supposing for any good reason it were found convenient to increase the number of Bishops, we could not expect that the Legislature would come in again each time, and admit a new set of titles. Parliament would not like the trouble. Parliament would say, "It is entirely an internal thing amongst yourselves; it is a way of arranging your own internal affairs, and we do not touch it." But if Parliament once began to say, "We will legalise the titles of the 13 Bishops now in England," then it would be necessary to come back to Parliament to legalise every new set of titles.

462. That was not quite my meaning. Supposing that it were allowed to use any titles and any number of them, but that a clause were inserted in an Act showing what meaning was put by Parliament upon the use of such titles,

how

how they might be legally used and in what sense they might not be legally used, might not that be a solution of the difficulty?

Parliament is supreme, and we should not like to lay down any rule for it; but the objection is, that as whatever Parliament now does would be an act of grace and an act of consideration to the feelings, especially of those who are in Ireland, who have worked so hard for the public interest, it would be simply keeping up an idea of a difference and of a qualification which would destroy the graciousness of it. I do not think it would be necessary, because, of course, everyone understands that Parliament, in tolerating us, would not in any way alter or interfere with the distinction of its own Bishops. I think if such a qualification were put in, it would only spoil the Act without improving the position of things; it strikes me that there would be that objection.

463. Are you acquainted with the case of Corfu, and do you remember what occurred in Corfu after the passing of the Ecclesiastical Titles Act?

I do not remember that.

464. I have heard that a Bishop was appointed there with the same Commission as those appointed in Ireland and in England; that there was a difficulty about his being allowed to exercise his functions under those terms, and that after some little delay he was sent with a different commission and made Bishop of the persons in communion with the Latin Church; have you any recollection of that?

I do not recollect that; but wherever the Oriental rites prevail that would naturally happen. In Constantinople there is a Bishop for every Oriental rite; and so, naturally, in Corfu, where the Greek rite prevails, it would be almost necessary to use the words "Bishop of the Latin rite;" not to avoid the English difficulty, but to avoid the difficulty which occurs all over the East, at Jerusalem, Antioch, and everywhere, each rite having its own Bishops.

465. Earl of *Harrowby*.] But why should not that same form be employed in England and Ireland?

It would be difficult to call us Bishops of the Latin rite, for example.

466. But, speaking simply in connection with the See of Rome, for instance, the principle seems to be recognised of admitting the title of Bishop, with a qualification as to the parties who are subject to it?

I do not recollect reading that they did do that in the case of Corfu, but all over the East each rite calls itself by its own name; it is "the Bishop of Jerusalem of the Armenian rite," for instance. The very same difficulty would arise which arises here, that if you want an English name for a Bishop you may add in an Act of Parliament the qualification; but in every-day life nobody would think of adding it, because it would be inconvenient.

467. *Lord Archbishop of York*.] It might be inconvenient in every-day life; but supposing it were a solution and a means of reconcilement, that those short titles should be freely used, provided it were understood that they only meant Bishops over the souls in communion with the See of Rome, might not that be a way out of the difficulty?

It seems to me that it would have so many consequences in the way of keeping up all the notions of estrangement, and difficulty, which have given much trouble in Ireland, I should be afraid to say yes. Whatever Parliament chooses to do we are unable to prevent; but I should not like to say that it would be the safest way out of the difficulty under the present circumstances.

468. Do you see any principle of your law, or belief, which would be infringed by it?

I think it would involve difficulties, but I do not like to go into them because I think they bring in those controversial questions, which I suppose your Lordships want me to avoid. All we say is, that the present difficulties did not exist before 1829; and what harm can there be in saying, Let us put things back into that state, because we are making no new demands upon the Legislature; we are not asking Parliament for any new recognition; we are not asking them to give any valid existence to the titles; we only say, "Do not touch them."

469. *Lord Bishop of Oxford*.] Why does it more introduce a controversial question in Ireland than in the East?

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In the East there is this difference, that all of them are in communion with the See of Rome. Though a difference is made by saying, "Such an one is of the Greek rite, and such an one is of the Coptic rite;" they are all Catholics together; and therefore the same conflict, which I say would be a controversial one here, does not arise there, because they are not in opposition to one another. It is only a distinction which does not produce opposition.

470. *Lord Archbishop of York.*] Is there any discontent with the existing state of things in Canada?

In Canada the Catholic Bishops were the first; they were in possession from the time of the Act of Cession.

471. But the Archbishop and his successors are called by an Act, "Archbishops of Quebec aforesaid in communion with the Church of Rome"; and then the Archbishops and others are created a corporation by the name of "The Roman Catholic Archiepiscopal Corporation of Quebec"?

But that was done, I think, simply for the purpose of the transmission of property by creating a corporation, and saying, "Whenever, in deeds, you want to appear in a corporate quality, and therefore with a power of transmitting to your successors, use this form." I do not think that it touched the question of the title in common parlance.

472. But have you heard of any difficulty arising from the existence of that Act?

I have not, because it is purely an administrative Act; an Act as to property and not an Act as to ordinary life, so to speak.

473. But still it might have other effects also, might it not?

I did not see the Act before this morning; I was trying to study it, and it struck me that that was really the whole purpose of it; that it was to do what exists in every parish church in the Established Church in England, where the clergyman is a corporation sole for all purposes affecting the property of his church; and I think it was intended simply to obviate that difficulty.

474. But the point I wished to ascertain was, whether such an Act as that in which the qualification has been used was passed with the consent of your communion?

I do not know; I only heard of it yesterday, and I could not find out any proof of whether they had in any way asked for that qualification or not.

475. This Act is passed in consequence of the petition of Archbishop Signay, of Quebec; and, so far as appears, it was passed to the full content of the Roman Catholic body?

Your Grace is in the habit of voting upon Bills in Parliament, and you can put a better construction upon them than I can; but I think one is obliged to regard the purpose for which it was passed, and that any accidental language used in the course of the Act would not denote the principal purpose of it; and we do not know that the attention of the Legislature was ever called to it. Supposing that your Lordships wished to pass an Act now relieving us from the Acts of 1829 and 1851, you might in the preamble use a great many names affecting any of us, but the essential thing would be when you came to the enacting part, and described us there: and I think the only enacting part is the part which describes each one as a corporation sole, and it would not be held that the Parliament of Canada intended to use the other title more than, as it were, accidentally. I think that it is all the difference whether you are to enact a title, or whether you are to say that that Act of Parliament was intended to do more than provide for the transmission of property, and I think that the latter was its object.

476. Then your counsel would be to leave the whole matter open, and without legislation?

Certainly.

477. But would not that put the prelates of your communion on a different footing in England and Ireland from that in which they are in all other European countries?

In

In European countries, or at least in most of them, the State provides for them all, and the Sovereign has a right of nomination in most of them.

478. Or a veto?
Yes, or a veto; in Prussia, for example.

479. You mention Prussia; I think the Rhine Provinces are different from the rest of Prussia as regards ecclesiastical matters, are they not?
Yes; it was arranged in the year 1821 that the chapters were to make out a list of what are called "persons grateful," *personæ gratæ*, and then the Government has the right of striking out any of those. Then the election of the chapter takes place upon the remaining names.

480. Earl of *Harrowby.*] It is a *congé d'élire*, is it not?
The chapter originates the names; it is not the same as the Sovereign saying "Choose," but the chapter sends a list of names, and then the Government strikes out anybody who is not agreeable to it.

481. Is there not something like a document in this form: "Your election will be more grateful to us if you choose so and so," the individual being rather pointed out as the one agreeable to the Sovereign?
I do not recollect that; I always thought it was in the other form, that they always struck out the disagreeable ones first, and then left the chapter to choose. Your Lordship may possibly be thinking of the form in the oath that we take; namely, we say: "And I all the more willingly promise ecclesiastical obedience," and all those other things, "because I am sure that there is nothing in the consecration oath which conflicts with the allegiance which I owe to Queen Victoria."

482. *Lord Archbishop of York.*] In the rest of Prussia, it amounts to a veto, I think, upon the appointments, not only of the Bishops, but also of the priests; is that so?
I do not remember just now, but I do not think so.

483. But the mere fact of payment from the State is not the foundation of the *exequatur* and the *placet* in other countries; the foundation of those rights is the right of the Sovereign to protect his sovereign power, is it not?
The form arose during what is known as the Great Schism, and the then King of England, for example, recognized *A.*, and the King of France recognised *B.*; and then the anti-popes were anxious to have their documents alone current, and admitted into each kingdom, and the *exequatur* was introduced to enable the subjects to know which were the documents coming from the Pope whom their King recognised. There is a short tract by Dr. Lingard explaining it.

484. The following passage from Giannone's History of Naples is quoted in Dr. Twiss's book on the Letters Apostolic. "It has always been lawful for princes, and commendable in them, that whenever foreign writs came within their dominions, whereby it was pretended to exercise jurisdiction, either spiritual or temporal, in them, to examine such writs before they were put in execution; so much the rather, that the Court of Rome, for a very long time, had assumed an authority far exceeding the bounds of a spiritual power, and often took upon them to decide points belonging to the temporal power of princes, and not within their province." As a mere matter of history, is that your impression?
I do not think that was the way; it arose entirely to distinguish the letters and provisions of the Popes from those of the anti-popes; but later it was found likely to answer two other purposes; first of all, that where there was a *ministre des cultes*, it enabled him to exercise a greater amount of supervision over nominations, and then it was also in some places a source of revenue through the fees upon the introduction of all those documents; but it has always been considered that, since the necessity ceased after the schism, the requiring of the *placet* or of the *exequatur* was everywhere an act which the Catholic Church disliked. In Italy they formerly used it, and then they dropped it, and I think they have begun it again now; but for a time they renounced it altogether, and said, "We will not press for it any longer." In many States, and especially in France, they have kept it up very

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very strictly in what may be called public documents, but they have not followed it out in other cases; for example, in Naples they would carry it to all minuteness into what might be called even parish nominations, but in France they have only kept it to bulls which might affect the Bishops and people receiving income from the State, or bulls which were supposed to provide in any way for new bishoprics and matters of consequence.

485. But supposing that, by legislation, Ireland were put in the condition that any bull or edict of the Pope could be published in Ireland, and that any prelate might be appointed by him, Ireland would be in a different position from any other country, would it not?

It would be only as it is now, because I do not think that, for instance, in Prussia, it is necessary to have the *exequatur*. The *exequatur* is not universal.

486. Then, as to the *exequatur*, supposing Prussia to be an exception as to the veto, Ireland would be in a different position from Prussia, would it not?

It would be different in that respect; that the chapters, or whoever proposed the names now, would still go on proposing them, and the Government would not object to any of the names.

487. The Government would have no cognizance of it in Ireland?

No.

488. The names never would be submitted to the Government?

No, just as at present; the Government professes to know nothing about it; it leaves it there. Lately there has been published rather a curious letter from Mr. Canning, saying, "At the risk of being accused of high treason, I want to obtain the help of your Eminence" (Cardinal Consalvi) "to have Dr. N. N. appointed Archbishop in Ireland." He says that he knows that it is high treason to interfere. The Government now finds it more convenient to take no notice.

489. Then may we take it as admitted that as to those two points, or as to one or other of them, no country in Europe would be in the same position as Ireland and England would be in, if these restrictions were taken off?

Not precisely. In Italy at the present moment, though there is an understanding that persons to whom the Government object will not be named, the Government has left the whole nomination. In the late arrangement it was always said, "We will try to find out who the persons are that are disagreeable on each side, and then we leave the Pope to choose;" in Belgium, as it Ireland, the appointment rests with the Pope.

490. But the Government has not in Italy renounced its right to interfere, by veto, or otherwise, with the persons nominated to bishoprics, has it?

I believe that the real truth is that the question has been avoided, so to speak; but before that time it was as it is in France, namely, that the sovereign originated the appointment, and the Pope objected if the person did not suit him.

491. Earl *Granville.*] Is it not rather difficult to institute a comparison where all the other conditions are quite different?

Yes, that is the case. In France, and those other places, the State provides everything, but here we exist without the assistance of the State in any way whatever; and we say, "Leave us as we are, because the State is doing nothing for us, and therefore let it do nothing against us."

492. *Chairman.*] May it not be reasonable to assume that where the State requires an *exequatur*, it is in cases where the State is desirous of providing assistance; and that where such assistance is not given the claim to the *exequatur* is not made?

It is true in most cases now; but they insisted on the *exequatur* in France before the Revolution had taken away the property, and when the property was administered by the Church altogether.

493. *Lord Bishop of Oxford.*] Do I rightly understand that you consider that any mark of difference attached to the title of Archbishop, or Bishop, which designated

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designated them as held by an Archbishop, or Bishop, of the Latin obedience, would cause dissatisfaction?

I think it would, because it is perpetuating a distinction. We say, "Why was anything penal ever introduced on the subject? There was nothing done to bring it about." In 1829 the Catholic Bishops had not in any way stirred up the population, or done anything that made it necessary to interfere; and I think if we were put back to where we were in 1829, everyone would say that the penal law had been removed; but if a distinction is put into an Act of Parment it is keeping up the penal enactments, and I think it would have an annoying effect in that sense.

494. Why should there be anything penal in there being two Bishops, with two different obediences; it being understood that that should be indicated in their official designation?

I have already mentioned that the difficulty would be this: that if it is said that a particular name must be used and no other, I do not know how far it might have mischievous legal consequences, and I think there would be this evil about it: that through all the times of persecution it was never considered necessary to forbid the use of those titles, nor was it found that there was any difficulty; and if now, in dropping the penal part of the law, a distinction is for the first time invented, it would seem to have the effect of keeping up a painful state of recollection.

495. So far as England is concerned there was no such case, because there were vicars apostolic?

No; and in England the difficulty would never arise also, because the titles never come together.

496. But they might come together, might they not?

Of course they might come together, but I do not think it is very likely that they would; because naturally it would depend much more upon whether there were numerous Catholics to provide for, than upon anything else. Liverpool and Birmingham happened not to be Anglican sees, and they happened to be places with a great many Catholics. The difficulty might arise, as your Lordship says, but I do not know that it would arise.

497. Earl of *Harrowby.*] Has there not been a suggestion of the creation of a Bishop of Liverpool in the English church, and would not the difficulty immediately arise there?

Then I suppose we should be only just where we are in Ireland, or in Canada, or in Australia, where, after the Catholic or Protestant Bishop was appointed, whichever happened to be the first, the other came in afterwards; but no one has ever found any inconvenience from the two being together.

498. But are they not in Canada distinguishable in any way?

I think not; I think they are simply called by their every-day titles.

499. *Lord Bishop of Oxford.*] Are you speaking of legal documents, or of conversation?

I do not know how it is in legal documents; but in common life I think that is the case.

500. Then, as to legal documents, you would perhaps not see a difficulty in attaching a mark to distinguish to which obedience the alleged Bishop belonged?

I think that as regards the strictly legal designation, it would be dangerous to insist upon one designation, and no other, always being used, because we cannot calculate what the consequences of that would be in the construction that lawyers would put upon such a title. That is where I should be afraid of it; because, not being lawyer enough to know what the consequences would be, I should not like to pronounce upon it.

501. Earl of *Harrowby.*] Is not the penalty now upon the assumption of the title being used by others?

Yes, but the difficulty is this: that, supposing a testator used the title, I cannot get possession of the money left to me.

502. It is very often the case in regard to wills, is it not, that the court overlooks all difficulties as to proper or improper designation, and only engages itself

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in identifying the person intended; could not some provision be made by which any doubt arising simply from a misnomer or a misapplication of the title on the part of a testator might be avoided?

I think, after all, the courts of equity would have to put a construction according to their own rules. For example, take the case of Lord Henry Seymour's will. He says, "I leave so much money to the Hospices of London." The courts had first to determine what is a hospice, and next, what constitutes London.

503. But might it not be arranged that the Bishop might assume the title in his own documents, and that its being attributed to him by a testator should not vitiate the act.

But then the law would provide for his signing at one time under a title which at every other time it took from him.

504. *Lord Bishop of Oxford.*] Do I understand you that your only objection to that is the fear of legal ambiguity, and that there is no other objection?

No; I said that I thought it would bring in controversial discussion, which I thought your Lordships would desire to avoid. It strikes me that your Lordships are anxious to provide for the removal of what is now irritating; and I say that I think that by removing this penal legislation you do not touch any claims that the Anglican communion may make upon people in England. You leave all that on its own merits, and I think that the more you avoid defining our existence the more you leave everything of that sort to its natural stand and place in the constitution.

505. Then, putting controversial questions aside, do I understand that no designation, except one, which apparently recognised exclusive possession, could give satisfaction?

I was purposely avoiding that. I think that if you simply drop the penal legislation you do not touch the question at all, and you do not compel us to make any claim, or to abandon any claim; you simply say that the constitution recognises a certain number of people existing in England, and allows their different forms of religion and religious government to exist. We do not ask Parliament to say, "We are going to recognise you as the exclusive Bishops of those places;" we only ask you to drop the recent exceptional legislation, and let the matter stand in its natural place in the constitution, as it was before the year 1829. I do not want either to make a claim or to abandon a claim.

506. Lord *Redesdale.*] Are you aware that there are other statutes, besides the Ecclesiastical Titles Act, which would bar the appointment of Bishops under the See of Rome being recognised?

I have asked Mr. Anstey, who has written fully on this special subject, and he says that before the year 1829 there was no legislation to prevent it, and that it was no offence in law; but I suppose your Lordship means it would come constructively under the question whether any of the Statutes of Præmunire are still in existence. The late Lord Lyndhurst had many of them repealed, but I do not know whether all of them were repealed.

507. Are you aware that there are Acts of Parliament which would prevent the introduction of any bull or rescript of the Pope?

I doubt whether they are in existence still. Lord Lyndhurst had removed very many of them, and I did not know how many of them had remained. Indeed, the Act of 1851 would have been unnecessary if earlier Acts forbidding titles were still in force.

508. Before the year 1851 the Roman Catholic Bishops in England did not bear designations from English sees, did they?

No.

509. What was the reason for making the change?

The petitions upon which the change was asked for stated distinctly that the object of it was to provide a better and a more uniform system of ecclesiastical management amongst ourselves. As your Lordship is aware, when you bring in Bishops in ordinary, the Canon law applies naturally to them, and all its provisions have to be carried out in that way in which they can be carried out in a communion that has no external existence at all before the State. It was found in England, from having no settled form of procedure and no code

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to appeal to, things were in very great confusion, and at last we said to the Holy See, or at least those who made the petitions said: "Give us a code applicable to the circumstances of England." That was attempted, but after it had been drawn out, it never was enacted, so to speak. Then they said: "The only plan to avoid the constant difficulties that you have in your own internal management, would be to give you the ordinary Canon law, and in order to give you the ordinary Canon law, you must have sees with a local jurisdiction."

510. But what difficulties did arise?

At that time there was no regular code to appeal to, and there were constantly questions coming to Rome upon whether a priest was rightfully dismissed or not, or whether it was lawful to insist upon building another church in a particular locality, and so on, and then they said: "You will always have those questions so long as there is no definite principle of law to appeal to. Take the ordinary law of the church, and then you know what you are talking about"; and appeals of that kind have hardly ever been sent since 1851.

511. But could not each of the Bishops have a district assigned to him under whatever title he was known?

That is the whole theory of jurisdiction; it is, that you must define the subjects over whom anyone, either a judge, or a magistrate, or a Bishop, must exercise his authority.

512. Could not dioceses or districts, whichever you call them, be defined and committed to a Bishop who did not bear the title of that diocese?

Yes, he need not have the title of the diocese, but he must have some designation which must mark the circumference of it.

513. The circumference of the diocese might be marked without the person who held jurisdiction in that diocese bearing the title of it, might it not?

Yes, that is the case of Vicars Apostolic. In the case of Vicars Apostolic, there were so many counties constituting the central district, for instance, and then they had a Vicar Apostolic to manage them.

514. Where was the difficulty of continuing under that arrangement?

Because the Vicar Apostolic was a special officer created each time for the purpose and not a Bishop in ordinary, and therefore the Canon law did not define all the different duties that were annexed to his office; nor would his people know where to look in case they wanted to know what was the law of the Church by which they were directed and bound.

515. Could not the Pope have declared that he was to exercise such and such jurisdiction within such and such a district?

That had been done before, but that was not found sufficient. That was the state of things from the year 1686 to the year 1850; but it was found that it did not prevent difficulties constantly arising, and then it was said, "You had better take the normal state of the Church, which everybody understands, the state as it is in the Colonies, and as it is in Ireland, and then you will have definite principles and a law to guide you."

516. Duke of *Somerset.*] I understand you to say that you wished to leave things as they were before the year 1829?

Yes.

517. But the position of things as they were then was entirely altered by the Popes's brief of 1850, was it not?

I ought to have said that, as regards our laws, I should wish the condition of things to be in England and Ireland as it was in Ireland before 1829.

518. But you are aware that we have to deal also with the position of England as well as of Ireland?

Yes.

519. And therefore it is not merely a question of the feeling of the Irish people, but we have to consider the feeling of the English people; is not that so?

Yes.

520. Then the Pope's brief in the year 1850 created a very different state of affairs in England from that which existed before that brief was issued, did it not?

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It only affected us in our own internal relations, it did not touch our civil state at all; and therefore I say, leave us in our civil state as Ireland was in 1829, and have no legislation upon the subject.

521. You say that your titles are for your own convenience?
Yes.

522. But at the same time we have evidence that the Roman Catholic Bishops decline to come to charitable meetings and other boards where their titles are not recognised?
I happen to belong to one of the London hospitals, and I have constantly gone there, and have not asked for any place, but I have taken my place wherever I happened to find a vacancy. I do not make any claim of any kind, and I have never known any Bishop stop away; I never knew that to occur.

523. If that is not the case in England, do you think it does not occur in Ireland; that in any cases the prelates have declined to attend boards and other meetings, because there is a difficulty in recognising their titles?
I never heard that that was the difficulty. What I heard was that there was a general estrangement since the year 1851, which made it difficult for them to attend; but I never heard that they stayed away because their titles were not recognised.

524. It being very desirable, on the one hand, to do away with that estrangement, and it being, on the other hand, desirable not to offend the Protestant feelings of this country, have you any suggestion which you could make which would meet the two difficulties?
It seems to me that as the nation has made its protest by those two Acts of Parliament, and has not since required them to be put in force, it could now remove the Acts and say, "We do not intend to recognise you in any way; we do not intend to impose penalties, but we will leave you."

525. The first part of the Act of 1851 was merely declaratory, was it not?
Partly declaratory, partly enacting.

526. Therefore it was declaratory of the existing law; are you aware of that?
It said that there was a doubt on the existing law.

527. And therefore that Act was declaratory of what we are told by legal authorities was the law before it was passed?
I thought it was that the Act added new penalties.

528. But the first clause of the Act was only declaratory, and that is declaring what the law was before?
The words are, "Are and shall be deemed unlawful and void." My Lord Redesdale was saying that it would be so by earlier Acts of Parliament. I am not aware how far these Acts have been repealed, but as his Lordship is, of course, a greater authority than I am upon the point, and as he knows exactly how it is, he would agree with your Grace's view, namely, that this first clause was partly enacting and partly declaratory.

529. Lord *Redesdale*.] It is entirely declaratory; it declares and enacts?
I thought it did both things.

530. Duke of *Somerset*.] The difficulty arises in this way: for instance, we have the evidence of an eminent Catholic solicitor, who stated in evidence, "We take it there can be but one set of Bishops, and that in England, out of the Roman Catholic Church, there are no Bishops at all." That is the view which he, as a Roman Catholic, takes of the position of the Bishops; is that the view that you take of it?
I hope your Lordships will excuse me, because I did not want to say anything at all upon what I have called the controversial part of this subject. But as you wish me to speak, we hold that the proposition of Mr. Hope Scott is true in the sense in which it stands, of their being no other Bishops save those in communion with the Pope to whom obedience is due. If, as a matter of fact, any others possessed valid ordination, they would be ordained Bishops, yet if out of communion with the Pope, they would possess no valid authority or jurisdiction in spiritual matters.

531. You

531. You have stated that in the East two sets of Bishops are allowed?
Yes, each governing the faithful of his own rite?

532. But you see a difficulty in adopting such a course as that in England?
Yes; but in the East they are all of one Communion; they are all Catholics, each Bishop attending to the people of his own rite.

533. Do you mean that the Greek Church are Catholics?
No, I do not mean that. I was speaking, when the question was first put, with reference to the state of things in Constantinople, where the chiefs of most of the different rites are in Communion with Rome.

534. Earl of *Harrowby*.] You mean the Greek Catholics?
Yes.

535. *Lord Bishop of London*.] But how is it arranged as to the Greek Bishops; where you have a Bishop, do you claim the see?
Yes; for example, at Constantinople we should go on using the title, though there was a Greek Bishop using it also; but I cannot recollect at this moment any particular city where the two things come together.

536. For example, is there not a Latin Bishop of Jerusalem?
Yes, a Patriarch of Jerusalem.

537. Duke of *Somerset*.] Would it not be desirable, if possible, to agree upon some designation by which the Roman Catholic Bishops could be acknowledged.
I am standing alone, and I avoid undertaking to define a question which has a great many legal as well as social consequences. Even your Lordships, if you were all of one opinion, could not impose your opinion upon Parliament, though you might fetter yourselves; so that I say I do not know how it could be done, and I think, therefore, it would be better to leave it without any affirmative legislation.

538. Then you would leave it in the confusion in which it may be, as you yourself said; for instance, if there is a Catholic Archbishop of Dublin and a Protestant Archbishop of Dublin.
Yes; because I do not think practically any difficulty arises or is attached to it.

539. You think, in fact, that there is no practical inconvenience?
I think not.

540. *Lord Bishop of London*.] A question was raised about Switzerland at a former meeting of the Committee; what is the arrangement there; does the Federal or the Local Government recognise the Roman Catholic Bishops?
I think that practice differs according to the Cantons; that in some of them the nomination is made direct from Rome, and in others probably there is an understanding before the person is chosen.

541. Are there territorial Bishops in Switzerland.
There are.

542. Is that the case throughout the whole of Switzerland, or only in the Roman Catholic Cantons?
There is, for instance, a Bishop at Lausanne, which is a Protestant Canton.

543. *Lord Colchester*.] Do the Roman Catholic Cantons make any claim to a veto on the appointment of a Bishop, as some European Sovereigns have?
I think not.

544. And there is no agreement with the Government of the Protestant Cantons?
I do not think that there is. I do not recollect reading of any concordat on the subject.

545. *Lord Bishop of London*.] What is the case as to Sweden?
In Sweden the Catholics have only a Vicar Apostolic, and he is for the whole of Sweden, except for the most northern part, and that is taken with what is called the Vicariate of the North of Europe.

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546. There are very few Roman Catholics in Sweden, comparatively, are there not?
I do not think that there are many. It was necessary to have a Bishop there, because at that time I think there were two or three successive Queens who were Catholics.

547. In Scotland they are entirely under Vicars Apostolic, are they not?
They are.

548. Does any inconvenience arise there?
I suppose that they must have the same difficulty that we had here before the year 1850; that is to say, that the legislation, so to speak, is personal and not defined, and of course when it is in that way many changes arise. A man is more apt for business at one part of his life than he is at another, and there is not the same security, as it were, for the people whom he is governing in the absence of known and acceptable laws, interpreted by text writers and the practice of other places.

The Witness is directed to withdraw.

Sir COLMAN O'LOGHLEN, Bart., a Member of the House of Commons, is called in; and Examined, as follows

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549. *Chairman.*] You are, I believe, Member for the county of Clare.
Yes.

550. How long have you been so?
Since the year 1863.

551. You are in the legal profession, are you not?
Yes; I am at present Second Queen's Serjeant in Ireland.

552. And you hold the Roman Catholic faith?
I am a Roman Catholic.

553. In what position were you at the time of the passing of the Ecclesiastical Titles Act?
I was practising at the Bar in Ireland at the time.

554. What was the feeling which the proposal of that Bill produced in Dublin?
There was very great annoyance indeed, and very great dissatisfaction, and as far as the Bar was concerned there was a protest against the Bill, signed by every Roman Catholic Queen's Counsel, and by every Roman Catholic practising barrister, with the exception of three, I think. At the time this protest was got up, I acted as secretary to the Committee that had charge of it.

555. Was it on general grounds, or did you specify any particular objections?
I think it was on general grounds; I forgot whether or not we specified in the protest any particular objections.

556. Having taken that part against the passing of the Bill, you have no doubt been attentive to its operation?
Certainly.

557. May I ask what effect it appears to you to have produced on the feelings of Roman Catholics in Ireland?
A most injurious effect, as far as the Roman Catholic Hierarchy is concerned. It severed them altogether from all communication with the Government. Before that period several of the Bishops of the Roman Catholic Church used to attend the Lord Lieutenant's levees in Dublin, and they used also to attend the Court there on other occasions; but since that time I believe no Roman Catholic Bishop has attended a levee; and I believe that no Roman Catholic Bishop, except the present Roman Catholic Archbishop of Dublin, Cardinal Cullen, has attended the Court, and he has only attended it since he has been appointed Cardinal; he has not attended any levee.

558. Lord *Somerhill.*]

558. Lord *Somerhill.*] Do you think that this Act has had any bad effects upon the political relations between the Government and the Roman Catholic Hierarchy in Ireland?

It has had most injurious effects.

559. *Chairman.*] I wish to call your attention, in reference to your last answer, to the following question and answer addressed, before the Committee of the House of Commons which sat last year, to Bishop Moriarty. He was asked, "Is it the fact that the withdrawal of the Roman Catholics from the National Board of Education was caused by the Ecclesiastical Titles Act?" and the answer is: "I consider that their withdrawal from the National Board was caused by that complete separation which exists between them and the Government of the country." Is it your opinion that this alienation, resulting from the Ecclesiastical Titles Act, was the cause why the Roman Catholic Bishops withdrew from the National Board of Education?

I would not go so far as that; perhaps Bishop Moriarty had reasons for giving that opinion, but I would not go so far as to say that they withdrew from the National Board for that reason. They certainly withdrew from all communication with the Government for that reason, but there may have been other reasons influencing their withdrawal from the National Board.

560. Duke of *Somerset.*] But I find it also stated that "The withdrawal of the Roman Catholic prelates from the Board was caused by their dissatisfaction with the system of education pursued, and with the rules of the Board at that time"; do you think that was a correct statement?

I would rather agree with that opinion. I think their withdrawal was not caused by the Ecclesiastical Titles Act, but was caused by dissatisfaction with the rules of the Board of Education.

561. The Bishop is asked this question: "Then the Ecclesiastical Titles Act had nothing to do with the direct withdrawal of the Bishops?" and he answered, "No, I consider that it operated indirectly;" would you agree with that answer?

It may have operated indirectly, but I do not think that it had any direct influence.

562. But so far as your observation has extended, has it caused a great alienation of feeling?

Certainly, and I think it is most injurious to have any cause in existence calculated to create an alienation between the Roman Catholic Hierarchy and the Government of the country. Such an alienation in Ireland acts most injuriously, and the Ecclesiastical Titles Bill certainly causes such alienation of feeling.

563. Lord *Redesdale.*] In what manner did the Bill affect the Irish Roman Catholic Hierarchy?

They were received at Court before that time, and though their titles were perhaps not legal, they were given to them as a matter of courtesy. After the passing of the Act they ceased to attend at Court, because their status was not acknowledged in any way.

564. You have spoken of the Roman Catholic Bishops; what is the feeling among the Roman Catholic laity on this subject?

There is a very strong and universal feeling against the Act. So strong was the feeling on the subject at the time the Act was passed, that it materially affected subsequent elections. The present Member for Queen's county, Mr. Fitzpatrick, lost his seat for having voted for the Ecclesiastical Titles Bill; so did Mr. Bellew, the late Member for Louth; and Sir Thomas Redington, after he had been Under Secretary for Ireland, tried two or three places and was beaten, because he had remained in office at the time that this Bill was passed. The present Mr. Baron Hughes also failed in obtaining a seat for the same reason.

565. Lord *Lyveden.*] Mr. Fitzpatrick, having a large property in the county,

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and being a popular person, was excluded from Parliament merely for the reason, having given that vote?
Merely for that reason.

566. *Chairman.*] Then the feeling was by no means confined to the Bishops or priests, but it extended strongly among the Roman Catholic laity?
Certainly.

567. Has that feeling died away, or does it exist at the present time?
The feeling of exasperation has died away, and as an instance Mr. Fitzpatrick is Member for Queen's County at the present moment; but certainly there is but one feeling among all the Roman Catholics, that it would be most expedient to repeal the Act.

568. There is a feeling, if not of irritation, at least of injustice?
Certainly.

569. Lord *Redesdale.*] You are aware that the Bill is declaratory?
Yes.

570. And the law would remain the same if the Act was repealed, would it not?
Yes. The Ecclesiastical Titles Act did not substantially affect titles in Ireland, because the Roman Catholic Emancipation Act before had prohibited the taking of titles similar to the titles of the Bishops of the Established Church.

571. Then in what way did the Ecclesiastical Titles Act affect the Irish Hierarchy?
It affected them in this way, that that provision in the Emancipation Act was a complete dead letter.

572. Why should they not have supposed that the Ecclesiastical Titles Act also would remain a dead letter as regarded titles of courtesy?
Because there was a complete change in the communications between the Government and the Bishops from that time forward. That Act was considered to be a declaration by Parliament that those titles should not be given, and the consequence was that the titles were not given.

573. *Chairman.*] Whether reasonably or unreasonably, as a matter of fact, a feeling of irritation did arise?
Yes.

574. And that feeling, we will say, not of irritation but of injustice still sustained, continues to the present time?
Certainly.

575. Have you, as a lawyer, had occasion to observe any injurious effects arising from the passing of these Acts as regards, for instance, Roman Catholic bequests, or any other matters?
Not exactly from the passing of those Acts; but certainly very injurious effects have arisen from the status of the Roman Catholic Bishops not being recognised. When I say that their status has not been recognised, I mean that it has not been recognised as it is done in Canada at this moment. Your Lordships may perhaps have seen the Act, which is in the Appendix to the Report of the Committee of the House of Commons. There the Roman Catholic Bishop of Quebec and his successors are recognised by law. The fact of Catholic Bishops not being recognised by law in Ireland causes very great inconvenience in legal matters as regards property conveyed to them and as regards bequests made to them.

576. It has been suggested that if a person not versed in the law, and desiring to keep his bequest a secret until his death, were, in his will, to express himself unguardedly, and were to leave a legacy in trust, we will say, to the Archbishop of Dublin, there would be a legal controversy whether it meant the Archbishop

Archbishop of Dublin of the Roman Catholic Church, supposing that the testator was a Roman Catholic, or whether it would mean the Archbishop of Dublin of the Established Church?

I think if it were left merely to the Archbishop of Dublin it would be construed by every court as the Protestant Archbishop of Dublin, because he is by law Archbishop of Dublin.

577. But it has been suggested that, in a court of equity, the religious faith of the testator would be considered as an indication of his intention; would that be so?

I fear it would not.

578. Therefore in this matter practical injustice might arise?

So long ago as the year 1822 it was decided by Lord Manners, in Ireland, that a bequest to "*A.*, Roman Catholic Bishop of so-and-so, and his Successors," was void. It was not void for *A.*—and, of course, during his lifetime it was good—but it was void as to his successors.

579. *Lord Archbishop of York.*] Because there was no corporation?

Because there was no corporation.

580. *Chairman*] The bequest would be void if the Bishop in question were to die before the testator?

It would. I may mention that I brought in a Bill in the House of Commons, last year, to remedy that defect, and it was thrown out on the second reading.

581. Perhaps you will have the goodness to explain a little more in detail the nature of your Bill?

I have a copy of the Bill here; it was intituled, "The Roman Catholic Churches, Schools, and Glebes (Ireland) Bill, 1867," and it was "to amend the law as to the granting of sites for Roman Catholic churches and schools, and to facilitate the creation of glebes and the erection of residences thereon for Roman Catholic Clergymen in Ireland." It was for the purpose of enabling grants for sites for schools and churches to be made to Roman Catholic Bishops and their successors.

582. That would be a repeal, so far, of the Act of 1829, would it not?

So far, it would be a repeal of the principle of that Act. The effect of the Bill was that any owner of land in Ireland should have power to grant to the Roman Catholic Bishop for the time being of any Diocese in Ireland, and his Successors, land for a Roman Catholic church or chapel, or for Roman Catholic schools, not exceeding five acres, and land for a glebe for any parish, not exceeding 20 acres.

583. Had there been any practical cases of grievance to induce you to bring forward that measure?

The object of that measure was twofold; first of all, to remedy the defects in the present law with respect to the granting of sites for churches, and glebes, and schools, in Ireland; and the next object was to have the Roman Catholic Bishops and their Successors recognised by statute.

584. As I understand, your Bill was intended to apply to Ireland only and not to the United Kingdom?

Not to the United Kingdom; it was intended to apply to Ireland only.

585. Lord *Lyveden.*] Does it occur to you that any alteration of the Ecclesiastical Titles Act, without its total repeal, would mitigate the dissatisfaction which you say is felt among the Roman Catholics on this subject?

I do not quite understand the word "alteration."

586. For instance, if the penal clause was omitted, would that make any difference?

I do not think it would.

587. *Chairman.*] Has it ever occurred to you what would be the best form, supposing legislation to take place upon this subject, of defining a Roman Catholic prelate, as distinguished from a Protestant prelate when both held the same see; and whether it would be wiser to leave the question undefined, as it was before the passing of this Act; or whether it might not be advisable to take this

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this opportunity of putting it on some legal footing which might be acceptable to all parties.

I am of opinion that it would be better to define it by some legal form, and the form I would adopt would be the form adopted in the Canada Act. That Act, which your Lordship will find in the Appendix to the House of Commons Report, was brought to my attention last year, and I gave it Mr. Justice O'Hagan, who handed it in as part of his evidence. There the form adopted is to call the prelate "*A. B.*, Archbishop of Quebec, in Communion with the Church of Rome." If I had been drawing the Act I would have put in "with the See of Rome;" but that is a mere technical alteration, and I do not think that anybody would object to it.

588. Would you give the territorial title at the same time; would you say, for instance, "Bishop Grant, of Southwark," or "Bishop Grant, in communion with the See of Rome"?

I would go exactly on the Canadian precedent. I would style a Bishop in this way, for instance: "The Right Reverend Dr. Moriarty, Bishop of Kerry, in Communion with the See of Rome." I may mention that, in Australia, where the Episcopalian Church is not the Established Church, in their Acts the the Protestant Bishops are defined as "Bishops of so-and-so, in Communion with the United Church of Great Britain and Ireland." The same form is adopted with respect to Protestant Bishops in Australia as I propose with respect to Roman Catholic Bishops in Ireland. There are three views in which you may consider a Bishop's title, religious, social, and legal; in all religious documents the Bishop would sign himself "Bishop of Kerry;" socially, too, he might be called "Bishop of Kerry;" but in all legal documents and Acts of Parliament I would call him "Bishop of Kerry in Communion with the See of Rome."

589. Lord *Redesdale.*] In what way do you propose that that should be effected without recognising the jurisdiction of a foreign potentate in this country?

In the same manner as it is effected in Canada; I cannot give a better answer than that.

590. Is the jurisdiction admitted in Canada?

The Act of Parliament in the Appendix, to which I have referred, seems to recognise the jurisdiction.

591. Were not the privileges of the Romish Church recognised in Canada at the time of the cession of Canada to England?

I am not aware of that.

592. Was not that one of the conditions of the Articles of Peace with France?

I cannot answer that question; but in the same way in which you can ascertain who is the Bishop in Communion with the See of Rome in Canada you can ascertain it in Ireland.

593. *Lord Archbishop of York.*] The objection felt by many to conceding the titles is no doubt the largeness of the claim which they appear to imply, viz., that the prelate, so styled, is the one and only Bishop having the right of jurisdiction over every soul within a given territory; you are aware of that, are you not?

That is the doctrine, I believe, of every Episcopalian Church, whether Catholic or Protestant; the Protestant Bishop claims, in theory, jurisdiction over every soul in his diocese, and the Catholic Bishop does the same; there is no difference in the churches in that respect.

594. But I think that you pointed out just now a mode in which that claim in the title might be explained, viz., that it practically gave spiritual jurisdiction over those who are in communion with the See of Rome?

Certainly.

595. Is it your impression that that way out of the difficulty would be acceptable?

It would be perfectly satisfactory, so far as I have been able to ascertain, both from communication with the laity and with the clergy. I think they would quite willingly

willingly accept any designation of the kind I have suggested, either in Acts of Parliament or in legal documents, and would be quite content that that should be their legal title. Of course with regard to their social title, no one addressing a letter would put, "In Communion with the See of Rome" outside the letter.

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596. *Chairman.*] Why would you prefer the expression "See of Rome" to "Church of Rome"?

Simply as a more precise description. In the case of the Protestant Bishop in Australia the designation is "in connection with the United Church of Great Britain and Ireland."

597. *Lord Archbishop of York.*] The highest appellate jurisdiction of the Church of Rome is in the See of Rome only, is it not?

It is in the See of Rome only. I may mention that at the time of the Union, when there was a proposition to endow the Roman Catholic Church by Mr. Pitt and Lord Castlereagh, there were inquiries made as to the position of the Bishops of the Roman Catholic Church in Ireland, and in Lord Castlereagh's Memoirs (volume 3, page 441), your Lordship will find a return to queries proposed by His Majesty's Ministers to the Roman Catholic Prelates of Ireland, relative to the then present state of their Church. It is dated 1800; and it states the number of the Bishoprics, and it gives an account of the whole status of the Roman Catholic Church in Ireland. It is signed by "J. T. Troy, R. C. Metropolitan of Dublin; Edward Dillon, R. C. Metropolitan of Tuam; Richard O'Reilly, R. C. Metropolitan of Armagh; Thomas Bray, R. C. Metropolitan of Cashel." That is an official document sent to the Ministry at the time of their inquiries, and it shows that then in 1800 the titles of the Roman Catholic Bishops were used by them on official occasions.

598. Was that the style used by themselves?

That was the style used by themselves, and sent by them to the Government. I may mention also that a Bill was prepared by Lord Castlereagh in the year 1816 for the endowment of the Catholic Church, which your Lordships will find in volume 4, page 425, and which Lord Castlereagh proposed as the best protection for the Established Church, and to place it on the most secure foundation. He appears to have thought that the Established Church in Ireland would not be on a secure foundation unless you were able to make a provision for the Catholic and for the Dissenting clergy at the same time, so as to put them all in the same position. He proposed this Bill, which is a very curious Bill, and he sent it to Dr. Everard, a Roman Catholic Bishop, for the purpose of being considered by him, and it was returned with his remarks. Lord Castlereagh, it appears, thought that the Catholic Bishops ought to have territorial titles; but he proposed that they should have different titles from what then existed. The schedule to the Act begins thus: "Titles of Roman Catholic prelates: the "Primate of Ireland, Metropolitan or Archbishop of Leinster and Bishop of "Dublin; Metropolitan or Archbishop of Munster; Metropolitan or Archbishop "of Connaught; Metropolitan or Archbishop of Ulster; Suffragan or Bishop of "Kerry; Suffragan or Bishop of Tipperary; Suffragan or Bishop of Mayo; "Suffragan or Bishop of Clare," and so forth. Lord Castlereagh proposed that the sum of 235,200*l.* a year should be applied for the payment of the Catholic clergy; and the principal mode in which that sum was to be raised was by Grand Jury Presentments in Ireland, and by the Roman Catholic Bishops meeting in Synod, and determining what fees should be paid for the different ministrations of religion, and those fees, when once established, to be regarded as legal fees and be recoverable by law.

599. Lord *Lyveden.*] Would the Bishops object to signing themselves Roman Catholic Bishops now?

They never do sign themselves so. In ecclesiastical documents they always sign themselves as Bishops of so and so.

600. *Chairman.*] As to Ecclesiastical signatures, there is one point which is not quite clear to me in the first extract which you read. I had understood that in the Roman Catholic Church, as in ours, the primacy of Armagh is recognised in Ireland; but I observe that the first prelate named in that schedule is the Archbishop of Leinster and Bishop of Dublin?

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We have two Primacies in Ireland. I believe there has been a dispute about it between Dublin and Armagh, and I think the Archbishops of each take the Primacy alternately. In reference to what I have referred your Lordships to, I may mention that it is also stated there that the Sacred College in Rome, and in fact the Pope at that time, had approved of the plan of endowing the Roman Catholic Church. I thought it right to refer to these passages in Lord Castlereagh's Memoirs, to show that at that time, in the year 1800, titles were used, and that in the year 1816 titles were introduced in the Bill proposed by Lord Castlereagh.

601. Earl of *Harrowby*.] That Bill was never introduced, was it?
It was never introduced.

602. *Chairman*.] You apprehend that the intention of Lord Castlereagh was similar to that of the Pope's brief of 1850; that there should be territorial titles, but that care should be taken to avoid the same titles as are borne by prelates of the Established Church?
Yes; and I may mention that in the third volume of Lord Castlereagh's Memoirs (p. 445), there is a "Summary of a Correspondence with the Right "Honourable Lord Hobart and Lord Viscount Castlereagh, on the subject of "the Roman Catholic Clergy, &c., relating principally to Ireland, in the years "1799 and in 1800," which is a very interesting memoir; and from that memoir it appears that at that time the Roman Catholics of England were anxious to get rid of Vicars Apostolic, and to have a Hierarchy established in England; and it gives the Pope's objection to it, because he considered that he had more power by having Vicars Apostolic than he would have by having Bishops. It is stated here that the Pope would not listen to the applications of the British Roman Catholics in favour of the change unless they were countenanced, at least indirectly, by his Majesty's Government. I only mention that to show that the notion of changing Vicars Apostolic into Bishops was not a new idea at the time of Cardinal Wiseman.

603. Duke of *Somerset*.] I think I understood you to say that, in your opinion, nothing but the repeal of the Act would be satisfactory to the Catholics of Ireland?
I certainly think so.

604. But I understood you also to say that you think that the repeal of that Act might be accompanied by some clause allowing of a designation for the Catholic prelates, similar to that which was allowed in Canada?
Certainly; I think that it would give perfect satisfaction if their legal title was fixed in that way.

605. That would be making, on the one hand, a concession towards the Catholic population; and, on the other hand, it would be allaying that feeling of alarm which some Protestants might feel if there was a mere repeal of the Act?
It would be so; and your Grace will see, on looking at that Canadian statute, that there is an express reservation of the Queen's rights against what might be considered any encroachment of the Church of Rome. The twelfth clause is as follows: "And be it enacted, that nothing herein contained shall affect, or be construed to affect, in any manner or way, the rights of Her Majesty, her heirs or successors, or of any person or persons, or of any body politic or corporate, such only excepted as are hereinbefore mentioned and provided for." That is the saving of what are called the Queen's rights, a protest against any other person claiming temporal power in the kingdom.

606. *Lord Archbishop of York*.] It appears to you that no objection would be taken to a clause so drawn?
I should say not; I should say that a Bill modelled on the Canadian Act would be perfectly satisfactory.

607. *Chairman*.] Have you heard whether the working of that Act avoids difficulties and gives general satisfaction?
I believe it does, but I cannot speak of it from any personal knowledge. My attention was called to the Act by a friend of mine, the late Mr. D'Arcy M'Gee, who was unfortunately murdered a short time since, at the time the Ecclesiastical

Ecclesiastical Titles Committee were sitting. I found it in the Commons' library, and I gave it to Mr. Justice O'Hagan. I had not found it at the time I brought in my Bill in the House of Commons last year, otherwise I would have used the very same words in describing the Roman Catholic Bishops.

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608. *Lord Archbishop of York.*] I do not see that in your Bill you give a title to the proposed corporation?

No; I said, "The Roman Catholic Bishop for the time being of any Diocese or district in Ireland, and his Successors;" but certainly I would have put in the words "in communion with the See of Rome," if I had been aware of the Canadian Act when I was framing my Bill.

609. Lord *Colchester.*] Did it appear that the English Government, in the time of Lord Castlereagh, sanctioned this scheme for establishing Roman Catholic Bishops in England in place of vicars apostolic?

It does not appear that they sanctioned it, but the matter was discussed; and your Lordships will find the whole history of the transaction in the volume to which I have referred. The paper to which I referred, as to the change of title from Vicars Apostolic to Bishops, is in the third volume, at page 452.

610. There was an idea on the part of those who contemplated those arrangements, was there not, that the Government would have some such right of veto as it possessed in foreign countries?

In the Irish Bill it was proposed that three persons should be nominated by the Roman Catholic Bishops, and that out of those three names, the Government should send one name to the Pope.

611. Duke of *Somerset.*] In that plan by which it was proposed to give the veto, it was also proposed to give a payment, was it not?

Yes; with respect to the appointment of Bishops, that Bill proposed that three persons should be selected, that their names should be forwarded to the Government, and that the Government should select one and forward it to the Pope; but I only use that Bill to show that by it it was proposed to give by statute territorial titles to Catholic Bishops in Ireland by the Government of Lord Castlereagh.

[The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, One o'clock.

Die Martis, 12° *Maii*, 1868.

LORDS PRESENT:

Lord Archbishop of York.	Earl Granville.
Lord Privy Seal.	Lord Bishop of London.
Duke of Somerset.	Lord Redesdale.
Earl Stanhope.	Lord Colchester.
Earl of Carnarvon.	Lord Somerhill.
Earl of Harrowby.	Lord Lyveden.

The EARL STANHOPE in the Chair.

The Reverend JAMES AITKEN WYLIE, LL.D., is called in; and Examined as follows:

The Rev. *J. A. Wylie*, LL.D.

12th May 1868.

612. *Chairman.*] You are a Minister of the Free Church of Scotland, and also Professor at the Protestant Institute, are you not?
I am.

613. Will you explain what the nature of that Protestant Institute is?
It is a seminary or college erected mainly by the Free Church of Scotland, with the co-operation of the other Protestant Churches of Scotland, for the initiation of students of all denominations into Romano-theology—into the principles of the Popish question.

614. Do you mean in training them for the ministry?
Training them partly for the ministry; giving a course of lectures on the distinctive principles of Roman and Protestant theology to students of all denominations, literary and theological.

615. Where does this college exist?
At Edinburgh.

616. How long has it existed?
About 10 years.

617. Have you all that time been the professor?
I have.

618. Earl *Granville.*] Have you a large number of students at the college?
From 150 to 200 students attend its classes.

619. *Chairman.*] Is it supported entirely by voluntary contributions?
It is endowed. The contributions were made chiefly by the various bodies of Scotland, and the result was its endowment.

620. To what various bodies do you allude?
The Established Church of Scotland, the Free Church of Scotland, the United Presbyterian Church of Scotland, and some members of the Episcopalian Church of Scotland, and others.

621. Are the Committee to understand, then, that all those bodies made contributions in money to the endowment of the Protestant Institute?
Yes.

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622. And in consequence of these endowments the Protestant Institute continues independently, in some degree, of voluntary contributions?
Entirely so.

623. Earl of *Harrowby.*] I think you would consider yourself as representing a good deal the opinions and feelings of a large body of your fellow countrymen in Scotland interested in Protestant questions, would you not?
I presume they take much the same view as I myself do of these matters. I should not put myself forward as a representative of my countrymen or of their opinions by any means; but I think that, in the main, they think much as I think.

624. In what light are you looking at the question of the establishment of the Roman Catholic hierarchy in England; do you look at it as a political or as a religious question?
I look upon it as the importation of a foreign temporal jurisdiction into our country, set up under a spiritual pretence, worked by spiritual machinery, but extending its sentences and workings very widely into the temporal and political sphere; and, in fact, what they call a church is what we call a State, and what they call religion is what we call a temporal government, although wearing a spiritual guise. That, in brief, is the aspect in which I view the Papal aggression, and the erection of the hierarchy in our country.

625. In what way did the creation of this hierarchy affect the position of Roman Catholics as regards the State?
I do not know that, essentially, it affected or altered their position; but the establishment of a hierarchy was a very great step gained, inasmuch as it is the machinery for erecting and working the canon law in our country. The Roman Catholic body had not previously the regular machinery in England which the Church of Rome declares to be necessary for working the canon law; but when the hierarchy was created it possessed that machinery; and it is now passing spiritual decrees which, however, carry temporal effects to a very large extent, and, of course, bringing into working-gear in our country a law which is antagonistic to the civil law of the country.

626. Can you give any instances of this collision between the canon law, which you suppose to have been given greater force to by the introduction of the hierarchy, and the law of the country?
I do not know that it is possible meanwhile for open collision to arise, because the civil law of our country is still the stronger, and so long as it remains so it will check the operation of the canon law; but I scarcely know a point of political life or of social life in which the canon law does not come into conflict with, or decree another thing than, the civil and common law of the country; and of course it becomes in that case a question of time.

627. Can you give any instances of this collision on temporal points?
In the first place, as regards the supreme power, whether the Queen or the Pontiff has the sovereign power in our country, the civil law says that the Queen has no superior under God, but the canon law most decidedly and unambiguously says that the Pontiff is the supreme authority in all countries; the supreme spiritual and ecclesiastical authority; but that spiritual and ecclesiastical authority has in its bosom supreme temporal authority. That is the key note of the canon law—the superiority of the pontifical power to the civil or temporal power in the particular country. Then, arising from that, is the deposing power alleged to be possessed by the Pope. He carries his theory into practical effect by assuming as one of the rights of his chair the power of deposing any Sovereign. At this very hour it is taught in Maynooth by the professors, that the Pope possesses a deposing power; that he has the power of annulling the allegiance of a subject, and also the power of teaching nations when they may rebel. This has come out very clearly and decidedly in the evidence tendered to Her Majesty's Commissioners, and contained in the Blue Book issued in 1855. They go about it, however, in a peculiar or roundabout way. The Pope cannot by an act of jurisdiction depose a Sovereign, but by infallible moral direction he can depose a Sovereign; that is to say, he can, as the great moral judge, declare a Sovereign's title to be illegitimate, and not valid, not by an act of direct jurisdiction, but by a sentence infallibly guiding consciences.

consciences. Then, as regards the allegiance of a subject, he cannot, by an act of jurisdiction, annul that allegiance; but he can by a moral sentence declare that the allegiance of the subject has become non-existent; and, in the third place, he cannot by an act of jurisdiction call upon a nation to rebel or rise in insurrection, but he can, as the infallible exponent of the moral law, tell them when their duty to obey has ceased, and when, by consequence, they have the moral power to rebel. That is the doctrine taught at this hour in Maynooth upon the deposing and absolving power; but I find in the last volume of essays edited by Dr. Manning, that he (Dr. Manning) has carried the deposing and absolving power of the Pontiff to as high a pitch as it ever stood at in the days of Hildebrand, or of Innocent III. Mr. Edmund Purcell, one of the writers of those essays, which have come to us under the *imprimatur* of Dr. Manning, declares that the "right of deposing kings is inherent in the supreme sovereignty which the Popes, as vice-gerents of Christ, exercise over all Christian nations;" that if the Pope does not exercise it in non-Catholic countries, he refrains in the exercise of a wise expediency, but that the non-exercise of this right by no means implies the non-existence of it; but beyond all doubt that it is a right inherent in the Pontifical chair. We find that doctrine published, I may say, at the very doors of the Houses of Parliament. That is one very important branch of the canon law, and the power that can depose monarchs is surely no merely spiritual power.

628. In what way do you connect this statement with the question put as to the increased force given to the canon law by the establishment of a Roman Catholic hierarchy by the Pope in this country?
Under vicars apostolic the canon law was not applicable?

629. *Chairman.*] Why not?
Under vicars apostolic provincial synods could not be held, and it is only provincial synods which can enact decrees applying the canon law to the existing circumstances of Papists in a particular country. A territorial hierarchy is the working-gear of canon law.

630. Your opinion then is, that there is less danger from the Roman Catholic doctrine in Scotland at present than in England?
I should not say from the doctrine, but from the working of the Pontifical power there is less danger in Scotland than in England at this moment, and England is the heart of the empire.

631. You assume that, under the system of vicars apostolic, less development is given to that system of canon law than under a system of territorial prelacy?
According to the canons of Rome, it is so.

632. Lord *Somerhill.*] With regard to the power of deposition of a sovereign, would that deposition take place by synods in effect?
I do not think there is any instance in history of a sovereign being deposed by a synod.

633. But I understood you to say that the synods gave effect to the power and decrees of the Pope in a country, and you had before stated that he assumed the power of deposing a sovereign, which would be of course a very important power if he possessed it. How would you connect the power of a synod with the carrying out of that power to which you object; with regard to the power of deposition, supposing a Pope issued a decree deposing a sovereign, would the decree have more, or less, effect from the action of a synod?
Certainly more effect, inasmuch as we should have a machinery in the country for guiding the consciences of Romanists and bringing the matter to a practical point. The Pope would issue the sentence, and the synod would aid in executing it.

634. You think, then, that the assemblage of a Roman Catholic synod in a country really practically effects the deposition of a sovereign, or injuriously affects the stability of his throne?
It does so in the way of strengthening and giving a legal form to the Pope's temporal supremacy in the country, and in the way of giving it a higher sanction, and also in the way of providing the canonical agency for giving it effect.

 635. *Chairman.*]

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635. *Chairman.*] But supposing any question to arise on the doctrine which you have thought fit to ascribe to the Roman Catholic canon law, or on the mode of giving effect to that doctrine, may not the decision be equally in the province of a vicar apostolic, as it may be in the power of a Roman Catholic prelate, calling himself Archbishop of Westminster, or Bishop of Beverley?

He may equally announce the Pope's sentence, but cannot equally give it effect. Under vicars apostolic the synods cannot be held, and the canons of Rome require that synods should be held, in order that provincial edicts may be framed; and by those provincial edicts the general provisions of the canon law apply to the circumstances of the Romanists in that particular country.

636. *Lord Archbishop of York.*] But I thought that the power of a vicar apostolic was larger than that of a Bishop or Archbishop?

It is not so large nor so high as that of a Cardinal. I glance for a moment at the true position of the matter in the country in answering your Grace's question, because the position at this hour is that a Cardinal is at the head of the Romish hierarchy in Ireland; but under vicars apostolic, Cardinal Wiseman told us that canon law could not be applied, because the canons of the Church require that it should be under a territorial hierarchy, and that it is only a territorial hierarchy that is qualified to apply canon law.

637. But is it not the case that there is only one system of canon law for countries governed by vicars apostolic, and by the ordinary system of episcopalian jurisdiction?

There is only one system of canon law.

638. And whereas the Bishop's power is limited, and the Archbishop's power is limited by the ordinary law of the Church, the power of a vicar apostolic is unlimited, except by the terms of his commission; in short, he stands for the Pope himself, does he not?

True, vicars apostolic have the power of the Pope; but a territorial hierarchy has it in higher degree, and in regular canonical form. A vicar apostolic is the Pope's delegate, but a territorial hierarchy is, in a sense, the Pope in person. He divests himself of his power, and gives it to them for that province. Vicars apostolic are Bishops *in partibus*; a Bishop *in partibus* has jurisdiction *in partibus*, and could exercise it, should it ever happen to him, in the course of his life, to visit his diocese; but in England he is the simple priest, or missionary. Two things are needed to make a Roman Bishop—orders and jurisdiction. Orders he gets by ordination, and jurisdiction, or the power of law, by legitimate designation, *legitima missio*; but Bishops *in partibus* are designated to only their foreign sees. The powers of vicars apostolic are limited; they are temporary; and under vicars apostolic they could not proceed to frame a permanent body of law. What one vicar apostolic does another may overturn.

639. But a vicar apostolic would not be bound to refrain from acting on the canon law because a provincial council was not held, a provincial council being impossible under the circumstances?

But his acts, as I apprehend, would not have the same legal form, nor the same binding power upon the conscience of Romanists, just because they are not so canonical.

640. Would the conscience of a Romanist be affected by the fact that a vicar apostolic holds a commission from the Pope, while a Bishop has territorial jurisdiction?

No doubt his conscience is still bound; but he would feel that it was bound under higher sanction, or in a more canonical form under a territorial hierarchy than under a vicar apostolic.

641. Why would that difference of feeling arise?

Simply because the canons of the Church assign this as the appointed form of carrying out their government.

642. Then, does not that go to prove that vicars apostolic are unlawful by the Romish canon law?

I do not think so. They are lawful; but can only serve a special end.

643. Earl *Granville.*] You stated just now that a Cardinal was superior to a Bishop; is the degree of Cardinal temporal, or ecclesiastical?

The

The degree is temporal; he is a prince of the Roman Empire; he comes in the place of a senator under the old Roman Empire.

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644. And a Cardinal need not necessarily be a priest?
He need not be a priest; I think that Cardinal Antonelli is simply a deacon; he cannot say mass; he is not a priest.

645. Earl of *Harrowby*.] And Cardinal Gonsalvi was in the same position, was he not?
Yes.

646. Lord *Somerhill*.] When Cardinal Wiseman spoke in the manner to which you just now alluded, did he not speak entirely of the ecclesiastical discipline of his own Church, and did he make any reference whatever to the temporal power?
When they speak of ecclesiastical discipline they speak of a discipline which, according to their canons, ranges over the whole of the political domain, and over the whole of the social domain, as well as the moral domain; and therefore their spiritual discipline is what other men understand by temporal government. It is termed spiritual discipline, but it is really a temporal *régime*.

647. Do you mean to say that he implied that by the establishment of a regular hierarchy he could in any way affect any man's property, or any man's liberty, in the country?
So far as the law would permit him to do so. He meant that he would carry out the canon law over the persons and properties and the rights of men to all the extent which the law of the land permitted him to do.

648. But practically by the law of the land, which you now mention, he could not have any power over any man's property, nor affect his person in any way; can you define or point out the temporal power which you say it will give him?
It does not appear that the nature of a power is to be defined by the opportunities which its possessor has of exercising it. Here is a power that claims all authority, temporal and spiritual, and it rests that claim upon a divine right. It claims the spiritual authority directly, and the temporal authority indirectly; and now again, as Dr. Manning gives us to understand, claims the right of directly punishing monarchs for heresy with the last punishment, which they say is deposition. This power plants itself in this country, and although it is checked meanwhile by the operation of the law, yet still the power itself is really temporal, and it simply becomes a question of time, or a question of power, when it shall be able to govern the kingdom temporally, and compel the civil law to be simply its servant, and to carry out its sentences. That is the assumption of Rome; that it has the right to make the civil power simply its servant and the executor of its sentences, those sentences ranging over the wide field of morals, and morals comprehending politics, social life, such as marriage and everything which involves duty. In every matter they tell us is duty involved, and in every matter their power can come in; so that here is a power which is positively temporal, and although meanwhile the power of the civil law prevents its reaching all those objects, still the power itself is temporal, and then it becomes a serious matter whether we shall permit such a machinery to be set up. They tell us that this machinery is necessary, and that a territorial hierarchy is necessary, for carrying that power into effect; and it appears to me to be simply a constitutional question. Shall we permit a machinery to be set up with the avowed purpose of carrying into effect, in our realm, a power which is really and substantially temporal?

649. You said that it was positively temporal; can you point out any instance in which the temporalities of any man or woman have been affected by it?
In other countries temporalities have been affected by it. In our country it is but paving the way for this.

650. My question referred exclusively to the British dominions?
It can hardly be in England meanwhile, because still the popular sentiment supports the law of the land; and so long as that is the case it will check this combined temporal and spiritual jurisdiction; but should that state of things alter (and it is possible that it may alter), then we have allowed to be set up in the midst of us a really temporal government.

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651. Earl of *Harrowby*.] You have been asked whether the power of the Pope is increased in any degree, and whether his power of enforcing the canon law is increased in any degree by the substitution of an organized hierarchy in the place of vicars apostolic; are you aware that there are portions of the Pope's authority which require to be sanctioned by an organized body within the country over which it is intended to be extended, and that it has no force until it is so sanctioned?

It has no legal force.

652–3. But are you aware that in such a case it has no power over the consciences of Roman Catholics?

I am not aware of that; I do not think that any sanction given by any mere civil authority in a country will, in the opinion of a Roman Catholic, add in the least to the power of the Papal jurisdiction.

654. I am speaking rather of synods; you are aware that some things, to be available in a Roman Catholic country, must be acknowledged and received within that country?

Yes.

655. And for that purpose there must be some organized bodies to receive them and give their consent?

If I understand the question rightly, it regards the superadded power of the synods.

656. Are you aware that several things were disclaimed in controversy with the Roman Catholics which rested solely upon the authority of the Church of Rome, because they had not been received in England, or in Ireland, and that wanting that consent they were held not to be binding upon the Roman Catholic conscience; for instance, in the case of the *Index Expurgatorius*, and in several other similar cases as to doctrine, are you aware that unless the doctrine were received by the Roman Catholic churches properly organized, it was not considered as binding upon the Roman Catholic conscience; and would not that, if it be true, affect a good deal the importance of having organized bodies, as opposed to bodies exercising a merely temporary and administrative function?

Undoubtedly it would require their existence before a formal power could be given to them. As regards the doctrine, I do not think that it is necessary to have that received by any organized body in the country; if it is promulgated *ex cathedrâ* by the Pope, and received by all the Bishops, of course it is binding as a point of doctrine. There may be bye-laws which are not binding on the conscience of Roman Catholics, unless they are received by organized bodies in the country.

657. You are aware that those doctrines which generally go by the name of the Gallican doctrines are considered as prevailing in some countries, unless the opposite doctrines, the ultramontane doctrines, are regularly accepted?

I do not think there is any distinction in point of doctrine as regards the Gallican liberties; the matter regards the government, the jurisdiction of the church. They have always pleaded for the independence of the French Church, so far, from the absolute government of the Papal See; but the point is restricted to government and not to the doctrines or creed of the Romish Church.

658. You are aware that, in Ireland and in England, what are called the Gallican liberties used to be recognised as the rule of the Roman Catholic Church in this country and at Maynooth?

Yes.

559. Earl *Granville*.] If you consider that the establishment of the canon law in England by this Act of the Pope's may have such dangerous results, will you point out to the Committee in what manner the Act which they are now considering is calculated to prevent that evil?

At the foundation of the matter you have the dogma of the Pope's vicarship binding up the temporal and spiritual power in one jurisdiction; and at the top of the system you have the last encyclical of the present Pope, the Encyclical of 1864, claiming both the direct and indirect temporal power. This is the jurisdiction which we are having imported into our country. They tell us that the territorial hierarchy and all this machinery are necessary for the working of that.

that. The titles are of no great moment, I apprehend, in themselves; but they are the symbols of their jurisdiction. They are necessary according to their canons for the working of that jurisdiction; and if we can put our hand, or if the law can put its finger upon those titles and upon the territorial hierarchy, it arrests, by Rome's own canons, the working of this temporal jurisdiction in our country; and therein I think lies the sole virtue or excellence of the Ecclesiastical Titles Act, viz., that it puts its finger upon that one thing which Rome itself declared to be essential to the carrying out of her scheme; hinged, indeed, upon which she rests the whole of the invasion of our country; and having made that Act, if we shall now repeal it, we shall undoubtedly be held by Romanists to have given a *quasi* sanction to a machinery which is intended to set up a jurisdiction inconsistent with the supremacy of our law, and, as I do solemnly feel, inconsistent with the prerogative of our Queen; and so we shall be in a worse position than we were before.

660. Then do I understand that, in your opinion, the existence of this Act has prevented the canon law from being binding upon those Roman Catholics who choose to submit to it in this country?

I do not think it has prevented the binding power of the canon law, or of any one doctrine of Rome, upon the conscience of any Roman Catholic in the country; but it has prevented Rome from going regularly and canonically about the business of setting up a jurisdiction which is really temporal, and which is opposed to our law, to our liberties, and really to our Throne.

661. Lord *Somerhill.*] Can you explain to the Committee how the Pope's authority has been practically altered or interfered with by this Act?

Just as a sovereign's authority would be paralysed were the whole machinery of his government to be arrested.

662. Has this Act had the effect of paralysing the whole machinery of the Pope's government?

I do not think it has had so decided an effect as that, but still it has had an effect; and it seems to me that Providence, that Power which watches over nations, has given to this country this one thing, this ground (it may be a small ground, but still it is a legal one, even on Rome's own admission), on which we can stand and resist the entrance of a power which is opposed to the supremacy of our Queen, and which in all ages our country has resisted.

663. Can you point out to the Committee any instance of a positive and tangible effect which this Act has had, or anything which it has done or prevented from being done?

It is not so easy to say what it may have prevented from being done, because that is not seen; but they are compelled meanwhile to act, even when they do act, illegally in the judgment of our Parliament. Therefore the law must be a restriction, and it will give us a hold upon them, and should they go to any great excess, we can point to the statute which they exceed; but if we repeal that we lose that advantage, and they obtain a *quasi* sanction to the exercise of their jurisdiction.

664. But has this Act in any case put anybody out of court as yet in any suit of which you may have heard; either in Parliament, or from the highest to the lowest court of the realm, has it affected any proceeding?

I am not prepared to give any instance, because I have not been watching the proceedings of our law courts, or the legislation upon the point; but I am speaking of what must be the general effect of maintaining that Act in force, and what must be the general effect of repealing it; that it will place our country in a more disadvantageous position than ever. We can at least, meanwhile, say that this is a power which is illegal and forbidden by statute, and that will be a fetter; but if we annul that statute, we have no restriction, and you must give way to the exercise of a power which I do verily believe will entail the breaking up of our constitution.

665. *Chairman.*] Are you aware that the penalties under the Ecclesiastical Titles Act have in no one case been enforced, or sought to be enforced?

They have not.

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666. Would it be your desire that some attempt should be made to enforce them?

I think that when Parliament makes a law from respect to its own authority it ought to carry out that law, and especially when, by carrying out that law, it does not encroach by one hair's breadth upon the religious liberty of Romanists in our country. They have their full right of worship; all their sacraments can be administered; all their doctrines can be believed and professed; and their whole worship is unfettered and unrestricted; and we simply forbid what they have no right to assume, namely, territorial titles which do not appertain to their religious rites.

667. If, then, you would wish to see the penalties more strictly enforced, are you satisfied with the present state of things, which leaves the penalties on the Statute Book, no attempt of any kind being made to enforce them?

It is better, certainly, than a repeal of the Act, because a repeal of the Act certainly lowers the power of our constitution; but leaving the Act, even as it is, with the penalties unenforced, we have so far a hold over the working of this foreign jurisdiction.

668. Lord *Lyveden*.] You say that you wish Parliament, when they enact a law, to carry it into force; but you are aware that Parliament cannot enforce the penalties; and therefore who do you think should have attempted to enforce the penalties?

I am not a lawyer; and perhaps I cannot answer that question correctly.

669. But as you have an earnest opinion upon this point, do you think that any private individual, who might act as an informer, might have done so, or has any attempt been made by persons who think with you so to do?

I am not aware that anybody has made an attempt to enforce them by informing.

670. Earl of *Harrowby*.] Is it your opinion that the law, as passed, has had an effect in preventing an assumption of authority which, if it had not been checked in this way, would have probably taken place; and that it has lowered the tone which was assumed on the first promulgation of the decree from Rome?

I decidedly think so.

671. And you believe that if this Act were repealed, there would be practically a withdrawal of that moral protest of the nation against the assumption of an authority within these realms, which in many respects interferes with the temporal jurisdiction by its assumption of moral authority?

Yes; and moreover it is a jurisdiction which we resisted even in Papal times, which we resisted even before the Reformation, and which appears to me to be a violation of the common law of the country. The statutes of *provisors* and *præmunire* are, I believe, still in force. These make it penal to bring rescripts from Rome. The case of Wolsey, before the Reformation, and of Lalor since the Reformation, are cases in point. The latter case goes to prove that to put in force a Papal commission of vicar general or vicar apostolic is an offence against the statute of Richard the Second, the foundation of our legislation on the point. But if we repeal the Ecclesiastical Titles Act, we shall create this most extrordinary state of things, even, that the common law will say that Papal rescripts may not be brought into the country, and yet we shall have virtually sanctioned the bringing of a brief, the building thereon a territorial hierarchy, whose avowed function is to frame laws, send them to Rome, and, when endorsed by the Pope, to be of authority, and to be enforced in this country. It does not appear to me that these two things can stand together.

672. It would appear to be giving a greater authority to the Pope's Rescripts in the country now than they even had before the Reformation?

If we repeal this Act we should be giving a larger power to the Papal Rescripts and Pontificial decrees in this country than they had before the Reformation, and perhaps larger than they have in any Popish country at this hour.

673. Whether legally or not, you believe that it would give a greater liberty and greater sanction than existed before?

Decidedly.

674. *Chairman*.] You are better satisfied, then, with the present state of Scotland, as regards Roman Catholic claims, than with the present state of England,

England, since you think the vicars apostolic less dangerous than that of territorial Bishops?

Yes. The system of vicars apostolic weakens the operation of the canon law by weakening the power of its jurisdiction.

675. Has the body to which you belong presented any petition against the proposed alteration or repeal of the Ecclesiastical Titles Act?

I am not aware that they have. I have not been watching the proceedings on that point very closely.

676. Are you aware of any such petition having been presented from any part of Scotland?

There have been a few. I cannot at this moment specify cases.

677. Earl of *Harrowby.*] Are there other points of collision between the canon law and the common law of the country to which you wish to call attention?

On the question of education there would be collision. The Church of Rome claims an entire and unrestricted control of the education of youth; and the hierarchy, that very hierarchy which we shall have sanctioned if we repeal the Act, would, by its edicts, empty our schools of scholars, unless they had the power of giving us our school books.

678. Duke of *Somerset.*] Would you explain the value of the Ecclesiastical Titles Act in regard to schools?

I do not know that it has any larger bearing than what I have now indicated, viz., that it allows the promulgation of a formal legal edict, forbidding or sanctioning any schools which the Government may plant in the country.

679. Cannot the Roman Catholics, as far as their own community will obey their edicts, now prevent Roman Catholic children from attending Protestant schools?

The priest can do so, and I believe in many cases in Ireland does so; but still when you have an edict wearing a canonical form, issuing from a body possessing jurisdiction, it comes with more power over the conscience.

680. What practical difference would it make, whether the command in that case came from a vicar apostolic or from a Bishop?

In the eye of the Romanist it would have a more legal form.

681. But in this country neither would have power, in comparison with the law of the country; the law of the country would not acknowledge either the power of the vicar apostolic or the power of the Roman Catholic Bishop, would it?

The law would not acknowledge the power, but still the power itself would be made more forcible over the Roman Catholic body.

682. Lord *Somerhill.*] In what way?

By coming in a more canonical form.

683. Do you think that, practically, as regards the heading or the signature of the document, the persons for whom national education was provided would either know or care in any sensible degree whether the authority was exercised by a properly consecrated Bishop or by a vicar apostolic?

I believe the priests would know and care very much, and of course would be more active in enforcing the edict on their flocks.

684. Do you think a priest does not give the same attention to a vicar apostolic, and to the decrees coming from the superiors in his Church (supposing he has the knowledge that they come from Rome, which we may assume to be the case), as he would otherwise give?

He might give the same attention, yet still an edict will always carry more power than the mere recommendation of a vicar apostolic, whose powers are limited and whose office is temporary, and whose official actings partake of the temporary and limited character of his office.

685. You have probably heard or read that there was a synod held at Thurles, in Ireland, at which the present system of national education for the people was condemned?

I am aware that such a synod was held.

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686. In point of fact, do you happen, by having looked at any of the educational reports of that country, to be aware that the number of children at this minute receiving education under the National Board is larger than it was before that synod was held?—I am not aware of that fact.

687. *Lord Bishop of London.*] Could a synod be held in a country where there was not a division of dioceses?

I do not think it could.

688. Therefore, before the division of dioceses, could there be any authoritative promulgation, such as that of the Synod of Thurles: in England, for example, previous to the creation of those dioceses, would it have been possible to hold a synod of Roman Catholic Bishops to promulgate any doctrine?

It would have been quite impossible.

689. Lord *Colchester.*] Do you attach any importance to the statement which I see was made by Dr. Ullathorne, that the absence of chapters to give counsel on the decrees of the diocesan synods was the principal distinction between the system of vicars apostolic and a territorial hierarchy?

I have not attended much to the power of chapters for the working of the system, and I could scarcely say whether I attach greater or smaller importance to it.

690. Duke of *Somerset.*] I understood you to say that there were two points on which you objected to the power of the Roman Catholic synods, one being with regard to education, and the second being with regard to marriage; was that so?

I mentioned marriage as one of the points on which the canon law and the civil law were likely to come into conflict.

691. Have they at all come into conflict on that point?

I am not aware that they have done so, or will do so as long as the civil law is supreme; but the doctrine of the Church of Rome would necessarily bring them into conflict very soon.

692. So long as the civil law is superior, the law of the Church of Rome is of very little importance, is it not?

It is not of much importance to us; but with a growing body, submitting themselves to the canon law, it becomes of importance as a great national and constitutional question.

693. Do you mean by "a growing body," an increasing number of Roman Catholics, or what do you mean by a growing body?

I mean an increasing number of Roman Catholics in England. I do not know that they are increasing in Ireland, but they are not diminishing, certainly, so far as I understand; but they are growing in England, though not to any large extent in Scotland. But in England the same doctrines substantially are being embraced by the Tractarians or Ritualists; already their theology is that of Trent, and by-and-by they will exchange the Queen's supremacy for the Pope's. This seems to me to be a very important consideration in connection with the erection of the hierarchy.

694. Then, do you think that a similar danger to that which arises from the Roman Catholics arises also from the Ritualists?

To a large extent. The doctrine of the Church of Rome on the subject of marriage is, that the intention of the priest constitutes the essence of the marriage, and of course that would in all questions of bigamy and similar cases bring their law very speedily into conflict with the civil law. We should have canon law declaring certain marriages null, which common law declared to be valid, and confusion arising therefrom: excommunication touches the civil rights of men: shall we give effect to these? if not, we shall be accused of intercepting the working of the hierarchy.

695. How is that affected, one way or the other, by the Ecclesiastical Titles Act?

In this way: it appears to me that by repealing the Ecclesiastical Titles Act we give a *quasi* sanction to the machinery by which this law which would conflict with our civil law is extended and strengthened, and by which it will ultimately obtain the dominancy.

696. You

696. You are afraid that by repealing the Ecclesiastical Titles Act we shall give eventually a predominance to the power of the Church of Rome; is that so?

I do not see that we have any legal barrier between us and the growth and ultimate dominancy of the jurisdiction of Rome if we repeal the Ecclesiastical Titles Act. I confess it to be rather a weak defence, but still it is a legal defence, and it serves the purpose, I think, were we carrying it into tolerable effect; but if we remove it, I do feel that we have thrown down our last defence, and that we are to a large extent at the mercy of a foreign, a haughty, and a growing domination.

697. Then, in your opinion, this Ecclesiastical Titles Act is the only barrier now remaining against the encroachments of the Church of Rome in this country?

That is perhaps too strong a way of stating it. I think the common law also stands as a barrier; but if we repeal the Ecclesiastical Titles Act we throw discredit upon the common law; we very much weaken the power of the common law, and we certainly should have the repeal of the Ecclesiastical Titles Act pleaded as a reason why we should not carry the common law into effect on all those questions.

698. But before the Ecclesiastical Titles Act existed, was the common law ever carried into effect?

I could not at this moment specify instances.

699. Is it as regards its moral impression, rather than as regards its legal power, that you attach importance to this Act?

To a very large extent it is as regards the moral impression; but I also attach importance to the legal efficacy of the Act: even though it may not be carried out, still there it stands upon the statute book; and in the case of any very flagrant act on the part of a foreign jurisdiction, we should be able to put in force the statute, and check it.

700. Lord *Carnarvon.*] I understand, in fact, that the objections which you have recently expressed really resolve themselves into this: that if the Ecclesiastical Titles Act were repealed, and if Roman Catholic Bishops were recognised with titles as such, then the voice of the Roman Catholic Church, as expressed through its Bishops, would carry greater weight among the members of the Roman Catholic community than that voice would carry if expressed through vicars apostolic, or through any other form of religious ordination?

I think what I have expressed amounts to a good deal more than that. If we repeal the Ecclesiastical Titles Act, we give what Rome will certainly hold to be a legal sanction to the territorial hierarchy. We shall have promoted the erection of a foreign jurisdiction, a jurisdiction as really temporal as it is spiritual, and which runs out into the temporal sphere; and whenever we turn round on any one point, and check the working of that jurisdiction, we shall be immediately told that we have sanctioned its erection, and that we are taking with the one hand what we have been giving with the other.

701. Were not the objections with reference to education, and with reference to marriage, which you stated a short time since, really resolvable into the form in which I have now expressed them?

Some of the questions may resolve themselves into that form, but others certainly go beyond that a good deal.

702. *Lord Bishop of London.*] With regard to marriage, your opinion is, as I understand, that though the law may override the decisions of Roman ecclesiastics, yet still greater confusion would be introduced into the State by their system having greater influence than it has at present, and that that influence would be secured by recognising their titles?

I think so.

703. You remember, of course, the case of the Archbishop of Cologne, and the quarrel with the King of Prussia?

Yes.

704. Do you remember how that was?

I cannot at this moment detail the circumstances.

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705. Was it not exactly this: that the Archbishop of Cologne, by his edicts, so interfered with the operation of the law of the land, that the King of Prussia thought it right to have him arrested and carried out of Cologne?
Yes, he was sent to the frontier.

706. So that the law, of course, was superior to him?
Yes, I thought your Lordship referred to his having interfered in the laws of marriage.

707. It was in the matter of mixed marriages, was it not, that the conflict took place?
I cannot say whether or not it was in the matter of mixed marriages; but I know he interfered with the law of the land, and was sent to the frontier in charge of a gendarme.

708. Then you regard the Ecclesiastical Titles Act as a protest against such edicts?
I do.

709. And you are afraid that the repeal of it would be the withdrawal of that protest?
I am. In fact, the question is, Shall England change her laws, or shall Rome change her canons? If we repeal the Act, we decide the question in the former sense.

710. Lord *Lyveden.*] Do you think it advantageous that a law should remain on the statute book which is notoriously violated, and which enacts penalties which are never carried into effect?
That is rather a question for Parliament to answer. Parliament has put it there, and I say if you take it away, you will very much lower your position as a country, and you will very much weaken our defence against a foreign jurisdiction, which refrains, it tells us, in the exercise of a wise expediency, from putting in force its undoubted right of deposing non-Catholic sovereigns.

The Witness is ordered to withdraw.

The Reverend ROBERT JAMES McGHIE, is called in; and Examined, as follows:

The Rev. *R. J. M'Ghie.*

711. *Chairman.*] You are Rector of the parish of Holywell-cum-Needingworth in Huntingdonshire, are you not?
I am.

712. How long have you been so?
Since the year 1847.

713. Have you paid attention to the canon law of the Roman Catholic Church?
Yes.

714. At what period do you conceive that it was introduced into Ireland?
There have been canon laws in Ireland, for we know not how long. The *Bulla Cœnæ Domini* was in the theology of Dens, which was set up by the Roman Catholic Bishops in the year 1808, as the guide and standard for the priests, "by which they were to direct the consciences of the people."

715. What was the date of that bull?
It was enacted by Paul V. in the year 1610, by Urban VIII. in England in the year 1627, by Clement XI. in the year 1701, and by Benedict XIV. in the year 1741.

716. In what manner do you conceive the system of canon law of the Roman Catholic Church to be carried out in Ireland?
It is carried out by the most perfectly organised system, I suppose, in the world. To explain exactly the manner, it is necessary for me to mention to your Lordships that these three books which I hold in my hand are necessary to understand the subject fully. One of these is the secret statutes which the Roman

Roman Catholic Bishops enact in their synods, and which they keep with the greatest possible secrecy, so as to prevent their being detected.

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717. You say that this book which you hold in your hand was kept with the greatest possible secrecy; that being so, by what means has that book come into your possession?

I found out that in this book, which I shall mention to the Committee again, and which is called "The Directory of Priests," that the statutes of the Roman Catholic Bishops was the subject of one of their conferences. I went to the bookseller who printed for the Roman Catholic Bishops, and I asked him for a copy of the statutes. "Oh! sir," said he, "you cannot get a copy of those, for when I print them I send them to Dr. Murray," (he was then the Roman Catholic Archbishop of Dublin), "and he keeps them and distributes them to his priests; so that unless you got a copy from him, you could not get one." I gave up, of course, all idea of getting a copy, but one day as I was walking through one of the streets in Dublin, I saw a catalogue of books hanging at the door of a book auctioneer; I looked at the catalogue, and I found it to be a catalogue of priests' books, and one of the first books I saw in the catalogue was "Statutes." I was coming over to England at the time, and could not attend the auction where the books were to be sold; but I went to a bookseller, and I requested that he would attend the auction for me, and I took the list and marked the books he was to purchase, so he said to me, "Sir, you have not mentioned the price you choose to go to for these books?" I said, "The books marked with a stroke you will purchase if they go at a fair price; but those I have marked with a cross, purchase whatever they cost;" and the "Statutes" was one of these books. When the books were set up to auction, for this book which was printed in Dublin in the year 1831, a book of the value of about half-a-crown, one person bid 1*s.* or 2*s.*, and so on; but in a few moments the bidding was confined to two persons; the bookseller who was bidding for me, and a person who was attending with the auctioneer; and it went up from half-a-crown to 5*s.* and 10*s.*, and so on, and the last bid that my bookseller made for it was 7*l.* 5*s.*; the other man bid 7*l.* 10*s.*, and he asked, "Why are you bidding against me?" "Oh! that book Father Costigan ordered me to buy in, and if it goes to 50*l.* you shall not get it." So, of course, my bookseller ceased bidding, and the book was knocked down to his opponent for 7*l.* 10*s.* The eyes of all persons in the auction were fastened on the bidders for this book. They could not conceive why it was sold for such a price. The day after, I think, a jobbing bookseller came to the person who had been bidding for me, and he said (it was mentioned in the newspapers), "I am told that you bid 7*l.* 5*s.* for a book of Statutes, I can give you a copy for five guineas." The bookseller consulted me whether he should buy it, and I said that of course, if it was worth 50*l.* to them, it was worth five guineas to me, and I told him to buy the book. The book gave me a very clear and perfect insight into the whole system, by which the canon law and all the instructions of the Roman Catholic Bishops are carried out. Then I should mention that I got from the bookseller afterwards copies of it, which enabled me to lodge them in cabinets in the universities.

718. What is the second book which you have?

The second book is what is called "The Directory of the Priests." It is useless and unintelligible to any person except the priests. It contains the orders for what they call their offices. They are obliged to recite their offices; that is, parts of the breviary and other things which are prescribed in this book for every day in the year, and they must have this book in order to enable them to recite their offices. Then the Bishops have a book which they select as one in which the priests are to be thoroughly instructed, that they may "direct thereby the consciences of the people."

719. *Chairman.*] What is the name of the first book?

"Statuta Diocesana per Provinciam Dublinensem Observanda;" and then it mentions the names of the Bishops, in suis respectivè Synodis Diœcesanis. "Edita et promulgata," and the date is 1831.

720. Earl of *Carnarvon.*] Are those statutes binding on the Bishops, or are the statutes binding on the priests only?

The statutes are the rules appointed by the Bishops, to direct the priests in all

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all things in which they choose to direct them; and one of the directions in the statutes is, that the priests must be thoroughly prepared in the book by which they are to "direct the consciences of the people."

721. Then, do you suppose that every priest is in possession of a similar volume?

Every priest must have a copy of the statutes, and every priest must have every day in the year in his hand a copy of the directory, because the directory is that in which he finds his offices which he must recite. Then the way in which they carry out all their laws and all their principles is this: they select a book by which the priests are "to direct the consciences of the people committed to their charge, for whom they shall answer in the day of judgment." Those are the words of their statutes. Then they appoint four conferences every year. For those conferences the chapters of the book, in which or by which the priests are to direct the consciences of the people, are broken into certain questions. Those questions are printed in the directory, and the priests at those conferences must answer the Bishop according to the book from the questions in the directory, so that priests may be thoroughly acquainted with the book by which they are to "direct the consciences of the people," that the Bishops may know that the priests are so informed.

722. Looking, then, to the number of priests who are in possession of this volume, and to the number of volumes which must considerably exceed several thousands, is it likely that secresy could be in the nature of things preserved?

That I cannot say, but I believe it is very closely preserved; I do not think that I could have got those statutes from any other person in Ireland, that I know of, except the person who gave them to me. He was a jobbing bookseller, and he could go among the priests, and exchange books with them.

723. But is every book on the death of a priest recalled?

I am glad that your Lordship happened to mention that to me, because it is very remarkable that in the directions for the vicars general, the rural dean is ordered to visit any priest who happens to be sick, and to take care that the register of baptisms and marriages and sacred vessels and vestments, and altar coverings and ornaments which belong to the parish, should not fall into the hands of any other person, but be kept by the rural dean, and he says "Exemplar verò horum statutorum secum domum portabit," he is to carry the copy of the statutes home in his pocket.

724. *Lord Bishop of London.*] Are those statutes promulgated by a synod?

By the synod of the Bishops.

725. Then, could there be such statutes in a country in which there were no dioceses?

I do not know.

726. Could a synod be held in a country where there were only vicars apostolic?

I should say not; for when the Roman Catholic episcopate was appointed in this country, Cardinal Wiseman stated that it was necessary to have bishops to carry out the canon law, and also for synods. Therefore, the vicars apostolic could not hold synods.

727. *Chairman.*] Will you have the goodness to state in general terms what dangers you apprehend from the introduction of the canon law of the Roman Catholic Church into either England or Ireland?

The danger is to be stated on the highest possible authority; your Lordships, perhaps, recollect that a Committee of the House of Commons was appointed to appeal to all foreign ambassadors and all foreign governments, to know the laws which they held in their several countries respecting the Roman Catholics. Returns were made of all those laws from the foreign states, and in those returns certain laws were mentioned which were excluded by an *exequatur* from all countries in Europe. One of those laws was the *Bulla Cœnæ Domini*. It was excluded in Naples, and the return from Naples stated that "it was abhorred and execrated in that kingdom," and that it was "rejected and expelled from the dominions of all Catholic princes." In Sicily it was stated that "the *Bulla Cœnæ Domini* had no other object than that of entirely overruling

ruling the legitimate power of sovereigns;" that it declared all those to be excommunicate who in any manner should favour heretics." In France, the *Bulla Cœnæ Domini* was declared to be "a direct infraction of the temporal and civil rights of all sovereigns." "This bull has been equally resisted in Venice, Germany, Spain, and other countries." "Its chief purport is to keep up the extravagant immunities claimed by the Pope and the Catholic clergy." Committees of your Lordships' House and of the House of Commons were appointed in the years 1825 and 1826 to examine the Roman Catholic Bishops on various topics, and, among the rest, on these several bulls. It was then their interest to deny those bulls, and to state that they could not and ought not to be published in Ireland. Dr. Doyle said that "if that bull were in force, scarcely anything would be at rest among all the Catholic States of Europe." Dr. M'Hale said that "the collision which would be supposed to result from the reception of that bull with the established authorities of the country was an insurmountable objection to its publication." Therefore you have the authorities of the persons who put this bull in force as to the dangers that must necessarily result from its publication.

728. The practical question before this Committee is with regard to the clause in the Roman Catholic Relief Act and the Ecclesiastical Titles Act: the question, then, on which the Committee would be glad to hear your opinion would be, in what manner any dangers which may result from any part of the Roman Catholic system have been diminished, or are likely to be diminished, by the passing of the Ecclesiastical Titles Act?

I do not conceive that the passing of the Ecclesiastical Titles Act affected them in the least. There were four great points to be considered before that Bill had passed. The first was the practical fact that the Pope had presumed to divide this country into districts. The second was, that he appointed his officers to preside over them. The third was, that he appointed them for the purpose of carrying out this canon law, as Cardinal Wiseman stated, and his statement of that fact was an authoritative publication of the canon law of Rome in England. The next point was merely the titles those Bishops were to have; and the law merely affected the titles, but left the great facts untouched.

729. This Act having passed, and having formed the subject of complaint from some persons of authority in the Roman Catholic community, the question is, whether, in your judgment, its retention is of value; and whether it affords any security to any of our Protestant establishments?

I do not think that it ever afforded the slightest security. I do not see how it affected the course of the canon law, or any of the acts of the Roman Catholic Bishops in this empire.

730. *Lord Privy Seal.*] Do you think it afforded any moral security as being a protest on the part of this country against foreign claims?

If I may presume to give my own opinion upon the subject, I would say that it seemed to me to be a very feeble and inefficient protest on the part of this country against the introduction of the laws which tend to subvert all our institutions. This *Bulla Cœnæ Domini*, as to which your Lordships have inquired, excommunicates the Sovereign and all the powers of the Protestant Government, and it establishes the temporal power of the Pope directly over every Roman Catholic. But the great object of the *Bulla Cœnæ Domini* is what is called "the reservation of cases." The poor Roman Catholics all believe that their priests have the power of pardoning their sins; but to establish the authority of the Church over the consciences of Roman Catholics, there are certain sins which in every diocese they say that the priests cannot pardon, but which are reserved to the Bishops; so that when a poor Roman Catholic confesses that he has committed such and such a sin, the priest says, "I cannot pardon you, you are reserved to the Bishop." Then there are other sins which, if a Roman Catholic commits, he is told that the Bishop cannot pardon, but which are reserved to the Pope; and the reservation of those cases to the Pope, is that which carries out the temporal power of the Pope over the conscience of every Roman Catholic; so that a poor Roman Catholic who finds that his case is reserved to the Pope is excommunicated, he cannot receive the Sacraments, and he is in a state of condemnation; and, therefore, there are no sanctions of British law so stringent over the consciences of men, as the sanc-

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tion of what they call their spiritual power over the consciences of Roman Catholics.

731. *Lord Bishop of London.*] Then do you suppose that this Bull was introduced into England by the division into dioceses?

Certainly; the vicars apostolic are merely an accident in the Church of Rome. They are not known to the canon law. The Bishops are the persons who are appointed to carry out the canon law, and Cardinal Wiseman stated, in his publication, that the Bishops were appointed for the purpose of carrying out the canon law, and he being, as they call him, a Prince of the Holy Roman Empire, that was his official proclamation of the canon law of Rome in England.

732. Then your opinion is, that this particular Bull, about which you have been speaking, was introduced into England by the aggression against which this Act was a protest?

Certainly, and there is now the Bull *Pastoralis Regiminis*, which is still more stringent. The *Bulla Cœnæ Domini* was a subject of examination before Committees of the House of Lords and of the House of Commons in the years 1825 and 1826. The Bull *Pastoralis Regiminis* they do not seem to have known; but that is a still more stringent Bull for carrying out the canon law and the authority of the Pope. Your Lordships will perceive that under the Bull *Pastoralis Regiminis*, if a Roman Catholic presumes to resist the orders of the Court of Rome, if he is a priest he is deprived of his orders and offices; that is to say, that he is turned out as a beggar on the face of the earth, and he has no redress; and if a Roman Catholic layman resists them he is subject to excommunication; so that the temporal power of the Pope in this country is as stringent and as stringently carried out over Roman Catholics as it could be under the walls of the Vatican by that law of reserved cases.

733. Lord *Lyveden.*] I understand you to say that you consider the Ecclesiastical Titles Act itself to be a very poor defence against the aggressions of the Romish Church; that being the case, do you consider it of any consequence whether it is repealed or not; do you think that the repeal of it would give any greater power to the Romish Church?

I think that the repeal of it is important in this sense; that it would give the Roman Catholic Bishops an opportunity or a power of saying that they hold a status in the country, which they do not exactly hold under that law; and I think it would enable them to tell the Roman Catholics, as I believe they do tell them, that they have defeated the Government, and that the Government was afraid of them.

734. The existence of the Act takes away that power of boasting; but in actual power you do not conceive that it makes much difference?

It has made no difference at all, for it never could be enforced, and it never has been enforced.

735. *Lord Privy Seal.*] Is it not true that the Roman Catholics attach great importance to that Act, and that they feel very much aggrieved by the passing of that Act?

I cannot say exactly what the Roman Catholics may feel, but I know that it is their policy of course to complain, and to say that they feel aggrieved, and to make demands, and demands, and demands, upon the British Government, and to call for concessions.

736. Still, if they consider it of such consequence that it does aggrieve them, is there not some good reason to suppose that they do look upon it as a barrier to their claims and power?

I am sorry to say that they do not sufficiently know or feel that there is really any barrier in the Government to the exercise of their power, for the exercise of their power is carried on without any opposition in Ireland, and now progressively in England. That is my full conviction on the subject from my knowledge of all their books, and of what they teach and of their laws, and especially of these laws. If your Lordships will allow me, I will read to you the statement of a Roman Catholic priest upon the subject. This man lived and died a conscientious Roman Catholic priest, but he was a man who had been educated

educated in some of the foreign colleges, and he was a loyal man. His name was Morrissy. He published a book in the year 1822, and he stated what the objects and views of the Roman Catholic Bishops were, and this is a part of his statement: "As the inquisitorial laws are general and unqualified, so must the Roman Catholic Emancipation be general and unqualified in the end; namely, the Pope must have the nomination and appointment of Roman Catholic monarchs to those realms. Ireland must be tributary to him again. The Bishops and clergy must be reinstated in their glebes and church livings. The forfeited estates must be restored to the right owners, and the established Church must be Roman Catholic. All the heretics in the land must be exterminated and their properties confiscated, and the nation must be purged from heresy and the remains of heresy. Then and only then will the Roman Catholics consider themselves fully and unconditionally emancipated. This is what is understood by an unqualified Catholic Emancipation." Now, if their laws are laws to carry out the principles which are stated by this priest, that is the law for the extermination of heretics out of the country. It is most important that your Lordships should know what the confession of the Roman Catholic priests and Bishops was before this law was put into force. The most eminent of the Roman Catholic Bishops, Dr. Doyle, wrote a letter to Lord Liverpool, in which he states that "Such a law" (meaning the third canon of the Fourth Lateran Council) "in the present age (for we will not judge others lest we ourselves might be judged) would be immoral, unjust, impossible; it would be opposed to the natural dispositions of the people of this empire. It would be contrary to all the laws, usages, and customs of our country. It would not be suited to the times and circumstances under which we live; and in place of being necessary or useful, it would upturn the very foundations of society; and, instead of benefiting the community, it would drench our streets and fields in blood." Your Lordships may judge from the present state of Ireland whether the publication in this country of the *Bulla Cœnæ Domini*, which it was said would not leave anything at rest in the country, or of this Bull, which was said to be likely to drench our streets and fields in blood, has done any injury to it or not. The very suspension of the constitution at this moment seems to me to be a very striking comment on those Bulls.

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737. Lord *Somerhill.*] Do you attribute, practically, anything which you may consider evil in the present condition of Ireland to the publication of the *Bulla Cœnæ Domini* of which you have been speaking?

I attribute it most certainly and most indubitably to the instructions which the poor Roman Catholics receive from their Bishops, all of which instructions, in their morals, in their theology, and in their comments on the Scriptures which they have secretly distributed amongst the people, are perfectly in accordance with these laws. These laws are only laws to put the principles of their religion into force.

738. As to those instructions to which you refer, of their prelates and priests, were they in any degree altered by the introduction of the bull of which you have been speaking, or are they the same as they were previously?

I believe they are, so far that the force of law has been given to the instructions which they conveyed to the people before, both in their Scriptures and by the priests in their directions to the people.

739. And are those instructions more binding upon the people now than they were previously?

These laws bring the power of the Church of Rome into greater activity. They themselves stated what the effect of those laws would be, and all the Roman Catholic statesmen in Europe state what the effect of those laws would be in their country; and therefore they exclude them, and will not allow the *Bulla Cœnæ Domini* to be published in any country in Europe; so that the fact of the matter is, that the poor Roman Catholics of Ireland are under more stringent despotism than the Roman Catholics of any other country.

740. Do you think that, practically, they are more under the despotism of the priests than they were 40 years ago, and that they are as much afraid of them in every sense of the term, applying it in every way, both as regards any superstition that they may have, and as regards any religious and proper feeling?

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I believe that there are many Roman Catholics in Ireland at this moment who are really loyal, and who really love British law, and who are groaning under the despotism of their priests and Bishops. I believe that the vast majority of the poor people are under that despotism, and ground down by it. If I may presume to offer an opinion upon the subject, I would say this, that while your Reform Bills give real liberty to the people of this country, they only increase the slavery of the Roman Catholics of Ireland, by giving the Bishops and priests a greater interest in compelling them to return what Members they please to Parliament.

741. But were those circumstances different before this *Bulla Cœnæ Domini* was introduced into Ireland, or before the Ecclesiastical titles were assumed in England?

I believe that every year the power of the Church of Rome has been growing. They have been encouraged more and more, I think, by the liberality of the British Government, and by the fact that really the statesmen of England do not know the laws of the Church of Rome, and do not understand the case. It has never been brought out. If it was brought out, and published, and if the facts were really known, I believe that it would be very different.

742. Lord *Redesdale.*] I understand, from what you have stated, that in the years 1825 and 1826, that Bull and the other provisions of the canon law to which you have referred, were not in force in Ireland?

The *Bulla Cœnæ Domini* had been in force in Ireland from the year 1808, in which year the Roman Catholic Bishops assembled in synod, and selected the theology of Dens, as the best book by which their priests could be guided. When we have their secret statutes we see that they selected this book for the purpose of instructing their priests "to direct the consciences of the people," so as to make the principles which the priests taught them a matter of conscientious obligation.

743. But, according to that statement, the evidence given by Dr. Doyle, in the year 1825, and by Dr. M'Hale, in the year 1826, must have been untrue?

Certainly it was untrue; there is not a question of it.

744. It has been stated, in a paper which you have given to the Committee, that the canon law of Rome was introduced into Ireland to the extent to which it exists there, still further, in the year 1832; in what way was that done?

It was introduced under the fictitious title of the "Eighth Volume of Dens's Theology." Immediately after the Roman Catholics got emancipation, in the year 1830, the Roman Catholic Bishops published a most amiable pastoral, full of loyalty, gratitude, and everything which you would say was most becoming to them, exhorting the people to live in peace, and so on. I will not detain your Lordships by reading the pastoral, but I tell you the nature of it; and indeed it was so good, that I recollect Earl Russell, at the time of the Papal aggression, quoting a passage from this pastoral, and saying that he wished that Cardinal Cullen and the Bishops then in Ireland would follow the example of the Bishops who wrote this pastoral in the year 1830. In that year 1830, they said that they themselves were thankful that by the emancipation they were delivered from the pain of entering into political agitation; that they now retired, and devoted themselves to the spiritual objects of their profession; and they exhorted the people to live in peace and quietness, and harmony, and obedience to the laws; and, in fact, no better pastoral could have been imagined. That was in the year 1830. But in the year 1831, Dr. Murray and his suffragans enacted these secret statutes, and the very first upon the list of those against whom they pronounced the sentence of excommunication were heretics. These are the words of the statutes to which I refer: "*De Censuris. Contra sequentes lata est sententia excommunicationis, ipso facto, incurrenda; a quâ nullus Sacerdos, nisi per specialem delegationem, absolvere potest.* 1° *Hæretici et apostatæ.*" They are the first persons against whom the sentence of excommunication is pronounced. Then in the year 1831 he set up "Dens's Theology" as the conference book for his province. That was for all Ireland. That conference book was the book by which he and all the Bishops in Ireland were to instruct the priests "to direct the consciences of the people." In the next year, 1832, they published an edition of "Dens," with an eighth volume, as they entitled

entitled it; but this eighth volume was the canon law of Benedict XIV., containing those laws which I have had the honour of laying before your Lordships. If I may presume to suggest anything to your Lordships, I would most earnestly advise that you should be so good as to have a copy of this book yourselves; the title is, "The Church of Rome; Report on the Documents deposited in the Universities, 1850." It is published by Shaw, of Paternoster-row. In those sheets, which I have presumed to give your Lordships, you will find a reference to the pages of this report for each of those laws; it is a sort of abstract, but the words of the document are here. I am quoting an extract from "Dens": "What are the laws enacted against heretics?" The laws enacted against heretics were these; and these principles were to be taught through the length and breadth of Ireland, and to the whole of the Roman Catholics: "Heresy is worse than Judaism or Paganism. Heretics are to be compelled to the faith by corporal punishment; their worship is not to be tolerated," and so on.

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745. Earl of *Harrowby.*] Are you aware that the Roman Catholics dispute the validity of the argument that the Bull was introduced by the introduction of that 8th volume of Dens?

They dispute and deny anything and everything they please.

746. Do they not hold this doctrine; that those books were introduced for the purpose of discussion among the priests, but not as accepting formally the Bulls?

They have stated over and over again, and it is the law of their Church, that whenever a Bull is published in any country it is put in force *ipso facto* in that country.

747. Do you mean to say whenever it is published by any bookseller?

Not at all; but whenever it is published under the authority of a Bishop, unless the majority of the Bishops in the country reclaim against it, then it is put in force in that country *ipso facto.*

748. But the defence which they have raised on this point is this: that this book was not a publication of the Bull, but was only a submission of the question as a matter of debate and discussion among the priests; but they deny, do they not, whether rightly or wrongly, there has been such a publication of the Bull you speak of, the *Bulla Cœnæ Domini,* as is intended by the canon law?

When the evidence was first brought out, in the year 1835, of the adoption of Dens by Dr. Murray, and the Roman Catholic Bishops of Ireland as the conference book for their dioceses, and when the statements were taken from Dens, of which I was reading to your Lordships an abstract of the dreadful sentences against heretics, and of the laws enacted against them, Dr. Murray wrote a letter to Lord Melbourne, in which he stated that he "did not make Dens a conference book, and that in fact they had no such book." Then the only evidences against them were the Directory and the book of Dens; but when these statutes were discovered, then the falsehood of Dr. Murray's letter was made perfectly clear, for here he says, "We command, therefore, that all priests may have in their possession some work of moral theology, in which frequently, and if possible every day, they may attentively read one chapter or title, that, being aided by this frequent study, they may be able to direct the consciences of the people committed to them for whom they shall render account to the Lord in the day of judgment." Then afterwards he says, "Therefore that the clergy may not be deficient in attaining a knowledge so necessary for themselves, and that we ourselves may be more certain that they are fully instructed duly and worthily, to sustain the grave offices entrusted to them as pastors and confessors, we command that conferences in theology shall be held every year in the first and second weeks of the months of July, August, September, and October, in which conferences all the priests subject to us are bound to be present, and if they are interrogated in the matter to be discussed they shall be able to answer; and if any priest shall be absent from the conferences twice in the same year without the consent in writing of the vicar general, we declare him *ipso facto* to be suspended. The questions to be discussed in each of the conferences of every year shall be

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announced in the Dublin Directory." In the Dublin Directory of that year, the annunciation was, "In obedience to the command of the Most Illustrious Archbishop and Bishops of this diocese, we shall discuss such and such questions" (I do not know exactly what they were) "from the author, Dominus Dens." Therefore, when Dr. Murray had declared in writing to Lord Melbourne that he "did not make Dens a conference book, and that they had no such book," the detection of his secret statutes proved that he had made it a conference book, and that he appointed it as a book which he had known before, and that it was "to direct the consciences of the people committed to the charge" of the priests, so that he and the other Bishops might know that the priests were duly instructed in it, and that the questions from it should be announced in the Dublin Directory as they were. Therefore, the fact was brought home to him beyond all question.

749. But have the Roman Catholic Bishops or authorities at any time admitted that the bull by that act has been received by the Roman Catholic Church in Ireland, and is in effective operation?
It is impossible that they can deny it.

750. But have they ever admitted it; have they not always pretended at least to dispute it?
They deny everything that suits their purpose.

751. Duke of *Somerset.*] You stated, I think, that you attach very little importance or value to the Ecclesiastical Titles Act?
Very little value. It is of no value at all.

752. At the same time you have pointed out at great length to this Committee the danger which you think will arise and is arising from the aggressions of the Church of Rome?
Beyond a doubt.

753. In your view, I suppose that it would be right that some far more stringent Act than the Ecclesiastical Titles Act should be passed in order to resist these aggressions?
That would be a question which would require very grave consideration from statesmen who are thoroughly well acquainted with the subject. I do not know of any law which could be passed in the British Parliament which would be effective as against them. If the British Government was to act as the other Governments of Europe do, they would denounce those laws, and shut them out of the country; but I do not know how they could do so. I do not know how they could prevent the Roman Catholic Bishops from carrying out those principles over the consciences of the people.

754. Then, in point of fact, your evidence comes to this; that the Ecclesiastical Titles Act is of no value, and you do not know any other Act which in this free country Parliament could pass which would be of any value for the purpose?
I do not say that I do not know of any other Act, for I believe it would be possible to draw such an Act; but I say that it would be one that would require very grave consideration from statesmen thoroughly acquainted with the subject. A superficial knowledge of these things, such as might be acquired, perhaps, from the examination of an individual like myself, is not sufficient; but if your Lordships were to investigate the subject, and if you were to have the documents which are lodged in the Universities brought before you, and were to see the documents of those men themselves, then you could form a full and perfect judgment upon the subject. I believe that there could be a law introduced which would be very effectual in preventing the operation of those laws; but it would be premature in me to presume to suggest that to your Lordships' consideration.

755. Lord *Colchester.*] In reference to England, did you state that you thought that the introduction of a territorial hierarchy introduced those laws, and restrained the power of the Pope more than the system of vicars apostolic did?

The

The vicars apostolic had no power of carrying out the canon law. The vicars apostolic are not mentioned in the canon law.

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756. Is it not supposed that where vicars apostolic exist, the Pope has the direct government, and that they act for him without the intermediation of a Bishop?

In the case of the vicars apostolic, I believe that there was nothing whatever deficient as to the mere religion of the Roman Catholics, but that they had the full exercise of their religion under vicars apostolic in England, as they had under the Bishops in Ireland; but when they saw that the canon law was introduced in Ireland, and that it was unresisted and unknown by the British Government, then the Pope thought that he could introduce it into England, and for that purpose he appointed his Bishops to do so here, and the canon law is as much in force in England now as in Ireland.

757. You think that something like those statutes from which you have quoted was introduced into England by the establishment of the territorial hierarchy?

By the establishment of the Roman Catholic episcopacy in this country the canon law was effectually introduced, because men were appointed to offices who had the power under the laws of Rome of carrying out the canon law, which the vicars apostolic had not.

758. And you suppose that the bulls, for instance, which you have mentioned, were not in force here in the year 1850, but that they became so in the year 1851?

Certainly.

759. Earl of *Carnarvon.*] I understand, with reference to the answer which you made just now to the noble Duke who questioned you, that your arguments in general were directed against the aggression of the Roman Catholic Church; but I also understand that, in particular, your objection consists in this; that whatever Papal influence, or power, or jurisdiction can be used in England is mainly exercised through the instrumentality of the Bishops of the Roman Catholic Church; is it not so?

I believe that all the power of the Roman Catholic Church is exercised by the Bishops. The Roman Catholic laity are merely the subjects, and slaves, and victims of the Papal law. They do not know it; they do not read it; I suppose none of them ever saw it.

760. In that case your objection would lie really as much to Bishops without territorial titles as with territorial titles, would it not?

The territorial titles do not in the slightest degree affect the power of the Bishops. The Bishops are in the country; they have their dioceses, and whether they get their titles, or do not get their titles, they will carry out their canon law over the Roman Catholic population of this country, and they are doing so now.

761. Your objection would be to the existence of a Roman Catholic episcopacy in England, would it not?

Beyond all doubt the admission of the Roman Catholic episcopacy into England admitted the canon law of Rome.

762. And therefore your objection is to the existence of the Roman Catholic episcopacy as such?

The Roman Catholic episcopacy as such are the instruments by whom the Pope carries out his law in this country.

763. *Lord Bishop of London.*] You mean a diocesan episcopacy?

Of course.

764. Earl of *Carnarvon.*] Might you not, therefore, carry your objection one step further, and apply it to any religious organisation as existing within the Roman Catholic Church for the purposes and objects of the Roman Catholic Church?

I do not fully understand exactly what your Lordship would convey.

765. The objections that you have urged, as I understood, lie really against

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the existence of a Roman Catholic episcopate, because through that episcopate greater influence is obtained and exercised upon the minds of the Roman Catholic community; is it not so?

The law is exercised and put in force by the Bishops.

766. And your objection is consequently to the existence of such a body?

Of course.

767. Then, must you not carry that objection one step further, and apply it to the existence and the recognition by the law of any organization of a religious kind in the Roman Catholic Church for religious purposes within that Roman Catholic community?

If the exercise of the authority of the Bishops was confined to spiritual things and to the pure exercise of the Roman Catholic religion, of course I should say they ought to have full liberty in a free country to carry out the principles of their religion, as pure religion; but when the principles of their religion lead them to carry out their laws against the institutions of a Protestant State, and against the persons and properties of Protestants, then I think that they ought by all means to be restricted by law.

768. May I not ask, therefore, whether the objection really does not resolve itself into this, that it is an objection against the existence of Roman Catholics as a religious body within the country?

How can any person object to the existence of Roman Catholics, as such, if you confine the objection to religion in a country? I am objecting to the admission or permission of their laws as against the Protestants. We give them full permission, and they ought to have full permission for the conscientious exercise of their own religion; but *hanc veniam petimusque damusque vicissim.* We should demand free exercise for our religion, which they would not allow us.

769. Earl of *Harrowby.*] I think you said you conceived that the Ecclesiastical Titles Act was a feeble barrier?

I think it is no barrier at all to the exercise of the canon law.

770. Should you be indifferent to its repeal?

I think its repeal would give the Roman Catholic Bishops a power of stating that they had made another advance upon the British Government and conquered the British Government, and made the British Government subservient to them, which is their great object.

771. You think that the repeal of the Act would give them great moral encouragement?

Of course.

772. And that moral encouragement is to a great degree an element of power?

It is to a great degree an element of power.

773. And therefore you do not consider it to be a matter of indifference whether the Act is repealed or not?

I do not.

774. Would you deprecate its being repealed?

I mentioned what seemed to me to be the objection to that; but it has been such a feeble and useless barrier against the actual evils of the Church of Rome, that its removal, I think, would not, in the slightest degree, either encourage or impede the power of the canon law. They do not mind it; they scoff at it; it is nothing; they laugh at the law, because it is a law that has never been and could not be carried into effect.

775. Do you believe that the law has not had an effect in diminishing considerably the public assumption of titles by the Roman Catholic hierarchy?

I do not think it has had the slightest effect.

776. Are you not aware that in their documents they studiously avoid infringing the law?

I think they infringe it without the slightest hesitation.

777. You

777. You are not aware of the forms which they employ in their public documents?

I do not know whether they would make themselves subject to the law in certain official documents, but they call themselves by their titles, such as "Cardinal Archbishop of Westminster."

778. But are you aware that in their documents they do not pretend to those titles?

I do not know.

[The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Tuesday next, One o'clock.

APPENDIX.

Appendix A.

Letter from the Right Rev. Bishop *Grant*, D. D., to the Earl of *Harrowby*. Appendix A.

St. George's, Southwark, S. E.
18 May 1868.

My Lord,

I wrote to the Bishop of Liège for information on the point raised by your Lordship before the Committee on Ecclesiastical Titles, and I beg leave to forward his reply, which it will not be necessary for you to have the trouble of returning.

May I explain, lest the terms should be new, that the *droit actif* means the right of voting, the *droit passif* the right of being elected. Thus, under Horne Tooke's Act, a clergyman has the *droit actif* of electing Members of Parliament, but has not the *droit passif* of being himself eligible.

Yours, &c.

The Earl of Harrowby. (signed) ✠ *Thomas Grant.*

Prusse.

Suivant la Bulle *De Salutem Animarum* de 1821, les évêques des diocèses, en deçà comme au-delà du Rhin, sont nommés par les chapîtres, et les chanoines honoraires ont droit actif d'élection. Les chapîtres doivent présenter une liste de trois candidats au Roi de Prusse, qui peut effacer *personas minus gratas*. C'est parmi ces trois candidats que le choix doit avoir lieu. Pour avoir droit passif d'élection, il faut être prêtre prussien.

Hollande.

Les chapîtres choisissent leur evêque conformément à l'instruction de la Propagande du 17 Juillet 1858.

J'ai tout lieu de croire qui en Suisse pas plus qu'en Belgique, le Gouvernement n'intervient en rien dans les nominations.

14 May 1868. *Bishop of Liège.*

Brought from the Lords, 22 *June* 1868

REPORT

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON

ECCLESIASTICAL TITLES

IN

GREAT BRITAIN AND IRELAND;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed*,
23 *June* 1868.

348.

Under 16 *oz.*

I N D E X

TO THE

REPORT

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON

ECCLESIASTICAL TITLES

IN

GREAT BRITAIN AND IRELAND.

Session 1867–8.

Ordered to be printed 16th June 1868.

(66—Ind.)

I N D E X.

[*N.B.*—In this Index the Figures following the Names of the Witnesses refer to the Questions in the Evidence; and the Numerals following *Rep.*, to the Pages in the Report.]

Report, 1868—*continued.*

D.

Report, 1868—*continued.*

Designation or Title—continued.

Statement that in 1850, the objection now made to the title of "Roman Catholic bishop" did not exist, *Sir W. Page Wood* 173-176——Approval of permission to use the title of "bishop in any place," the law being at the same time declared in some unmistakeable manner, *Sir J. Napier* 349-351.

Absence, practically, of any difficulty in Ireland, as regards confusion of titles, under the former laws; it should be left, in fact, to each testator to choose his own designation, or title, for the bishop to whom a bequest is made, *Right Rev. Bishop Grant* 447, 448. 460. 494-497. 537-539——Grounds for objecting to Roman Catholic prelates being designated by Parliament under the title of "bishops of souls in communion with the Church of Rome," in any district, *ib.* 460 *et seq.*——Suggestion that irritation might be allayed, and satisfaction given to all parties by a parliamentary designation which should involve a territorial title, but should include the words, "in communion with the See of Rome," *ib.* 585-597. 603-608.

See also *Alienation of Roman Catholic Prelates. Canada. Canon Law* (*Church of Rome*). *Charitable Bequests. Charitable Bequests Board. Continental Countries. Exclusiveness of Title. Jurisdiction. Papal Bulls and Briefs. Penalties. Repeal of Acts of* 1829 *and* 1851. *Site of Schools, &c. Territorial Titles. Vicars Apostolic.*

Dissatisfaction. Great discontent produced in Ireland by the Ecclesiastical Titles Act, *Ball* 357-360——Constant irritation of Roman Catholics by the penal character of the Act, *Right Rev. Bishop Grant* 443, 444——Witness testifies to the great dissatisfaction caused among the Roman Catholic community in Ireland, and the bar especially, by the Bill of 1851, *Sir C. O'Loghlen* 551-555. 564-568.

Conclusion of the Committee as to the great dissatisfaction caused by the Act of 1851, *Rep.* iii.

E.

Education. Evidence as to the prospects of collision on the question of education between the canon law of the Church of Rome, and the common law of this country, unless Roman Catholic synods are prohibited, *Wylie* 677-689.

Established Church. Injury rather than protection to the Established Church in Ireland by the Act of 1851, *Ball* 358. 398.

Exclusiveness of Title (*Roman Catholic Prelates*). Comment upon the exclusiveness of the claim or title contended for by the Roman Catholic Church, *Sir W. Page Wood* 173; *Sir J. Napier* 349——Witness would totally disregard the claim of the Roman Catholic bishops to be only bishops, as conveying only a voluntary jurisdiction, *Ball* 392-410.

Unwillingness of witness to make any claim to exclusive spiritual jurisdiction in connection with recognition of territorial titles, *Right Rev. Bishop Grant* 530.

See also *Territorial Titles.*

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